
(1986) 09 AHC CK 0043
In the Allahabad High Court
Case No : Writ Petition No. 2043 of 1977

Shitla Prasad alias Sitlu

APPELLANT

Vs

JDC and Others

RESPONDENT

Date of Decision : 26-09-1986

Acts Referred:

Easements Act, 1882 — Section 52

Oudh Rent Act, 1886 — Section 205, 68A

Transfer of Property Act, 1882 — Section 105, 108

Citation : (1986) 09 AHC CK 0043

Hon'ble Judges : K.N.Misra, J

Final Decision : Allowed

Judgement

K.N. Misra, J.—In the present Writ petition the dispute relates to plot Nos. 572, 574 and 575 situate in village Ranupali, Pargana Haveli Oudh, Tahsil and District Faizabad which were recorded in the basic year Khatauni in the name of Mata Prasad and Smt. Chotka, the predecessors of petitioner Shitla Prasad son of Mata Prasad. Smt. Chotka is said to have died issueless and her interest is said to have also devolved on the petitioner. The Village was brought under consolidation operations initially in the year 1956 and in those proceedings Malhu, the opposite party No. 4, since deceased, and in whose place name of his son Ram Newaj was substituted, had filed an objection under Section 12 of the U.P. Consolidation of Holdings Act (Old Act) with the allegation that a lease was executed on 10.8.1939 for a period of ten years on annual rent of Rs. 10/ by the grand father of the petitioner Ram Lal in his favour for planting guava grove. He continued in possession till June, 1961 when the father of the petitioner and Smt. Chotka, his aunt, had forcibly taken possession in July, 1961. The objector claimed to have acquired Sirdari rights on the basis of said lease and also in the alternative on the basis of adverse possession as he continued in possession over the said plots even on the expiry of the period of lease on which he had planted guava trees. This objection was allowed by the consolidation officer vide order dated 14.4.1956 holding Malhu to have acquired Sirdari rights on the basis of long

adversepossession. The petitioner's father Mata Prasad and Smt. Chotka filed appeal which was allowed by the Settlement Officer, Consolidation vide order dated 15.9.1958 holding the appellants to be tenureholders of the said plots in dispute and that Malhu is an Asamitenant on their behalf. It was held that since Malhu was occupant of the grove on the date of vesting; hence he acquired Asami rights and not Sirdari rights as was held by the Consolidation Officer. Aggrieved by this order, Malhu filed a revision which was allowed by the Deputy Director of Consolidation vide order dated 27.3.1959 and the case was remanded to the court of Consolidation Officer with the direction that it be referred to the arbitrator for an award on the question of title involved for determination under the provisions of the un amended Consolidation Act. In the meantime the village was denotified under Sec. 6 of the U.P. Consolidation of Holdings Act. Thereupon Malhu filed a suit on 12.2.1962 under Section 209 of the U.P. Zamindari Abolition and Land Reforms Act for ejectment and damages against Mata Prasad and Smt. Chotka on the said allegations. This suit was decreed vide judgment and decree dated 17.3.1966. Aggrieved by it, Mata Prasad and Smt. Chotka filed appeal which was allowed vide judgment and decree dated 3.5.1967 and it was held that Malhu had relinquished possession on the expiry of the aforesaid lease and the appellants have been in possession over it since then. Thereupon Malhu filed second appeal in the Board of Revenue which was ordered to abate vide order dated 19.1.1970 as the village was again brought under consolidation operations by a notification made under Section 4 (2) of the Amended U.P. Consolidation of Holdings Act (for short the Act.). Malhu, thereupon, filed an objection under Section 9 (2) of the Act on 13.10.1969 (sic) praying that he be recorded Sirdar/Bhumidhar and the entry in the names of Mata Prasad and Smt. Chotka be expunged. This objection was contested, inter alia, on the ground that Malhu is neither the tenureholder nor in possession over the plots in dispute and that he acquired no rights in the land in dispute on the said alleged pleas nor he could acquire Sirdari rights on its basis. After taking evidence of the parties, the Consolidation Officer vide judgment and order dated 27.5.1971 (Annexure No. 5) allowed the objection filed by Malhu and held that he being occupant of the land in dispute, acquired Adhivasi/Sirdari rights as he was in possession till 1961. Aggrieved by this order, the father of the petitioner Mata Prasad and Smt. Chotka preferred appeal which was dismissed by the Settlement Officer, Consolidation vide order dated 17.8.1971. Meanwhile Mata Prasad died and, therefore, aggrieved by said order petitioner Shitla Prasad and Smt. Chotka preferred revision which was heard and dismissed vide judgment and order dated 13.12.1976 passed by the Joint Director of Consolidation. Meanwhile Smt. Chotka also died and Shitla Prasad thereupon preferred this writ petition against the aforesaid order.

2. Learned counsel for the petitioner Sri S. R. Dwivedi urged that Ram Lal, the grand father of the petitioner was admittedly the statutory tenant of the aforesaid plots in dispute. He is said to have granted lease dated 10.8.1939 to Malhu for planting guava trees thereon, although it was not a sublease for doing

cultivation on the said plots and since the lease was to be operative for a period of ten years; hence it could not be operative to create Sirdari rights in the plots in dispute as no sublease could be granted by a statutory tenant for a period more than two years as was provided under Section 68 of the Oudh Rent Act. It was further urged by the learned counsel that during the Oudh Rent Act, by plantation of guava trees, the land could not be a grove nor any sublease for planting grove could be granted by the statutory tenant. Learned counsel further contended that on the expiry of ten years" period the lease was not renewed and Malhu surrendered possession to Mata Prasad and Smt. Chotka who continued to remain in possession over the land in dispute ever since then. It was further urged by the learned counsel that the consolidation authorities erred in law and facts of the case in holding that Malhu being occupant acquired Adhivasi/Sirdari Rights. It was also contended by the learned counsel that the consolidation authorities have ignored material oral and documentary evidence and wrongly held that Malhu continued to be in possession till 1961. The Settlement Officer, Consolidation also fell in error in holding that Malhu got Asami rights in the grove in dispute which matured in Sirdari rights as he was not ejected from the plot in dispute under Section 202 of the U.P. Zamindari Abolition and Land Reforms Act within the prescribed initial period of limitation of one year for ejectment of asamis. It was vehemently asserted by the learned counsel for the petitioner that the opposite party Malhu could neither acquire subtenancy rights on the basis of said lease nor could he acquire Asami/Sirdari rights maturing in Sirdari rights and the consolidation authorities committed manifest error of law misconstruing the oral and documentary evidence on record while holding that the opposite party Malhu has acquired Sirdari rights in the land in dispute.

3. In reply, learned counsel Sri Harguru Charan urged that Ram Lal executed a valid sublease in favour of Malhu on 10.8.1939 in respect of aforesaid plots granting permission to plant guava trees thereon, This sublease was granted to Malhu on the annual rent of Rs. 10/ which, according to the learned counsel was regularly paid to Ram Lal and Malhu continued to remain in cultivatory possession over the land in suit over which he had also planted guava trees, which in due course of time acquired the character of grove. Learned counsel urged that although plantation of guava trees could not be treated to be grove under the Oudh Rent Act, but subsequently on the passing of U.P. Tenancy Act, the grove having guava trees was treated to be a grove land if it assumes the character of grove and the trees planted thereon were in such a number that they preclude the land or any portion thereof for being used primarily for any other purposes. Learned Counsel further contended that even if the said lease, which was granted for a period of ten years, could not be granted for a period under Section 68 of the Oudh Rent Act, the sublessee, who continued to remain in possession, would be taken to have acquired rights of a tenure holder by prescription and, thus, whatever right, title and interest the lessor Ram Lal had held in the land in dispute, the same got extinguished.

4. The first question which crops up for consideration is whether the lease deed

dated 10.8.1937 contained in Annexure D5 is a valid sublease in respect of plots in dispute, namely plot Nos. 572, 573 and 574 executed by Ram Lal in favour of Malhu Ram or merely a licence for planting guava trees on the said plots. It is not disputed that Ram Lal was the statutory tenant of these plots and he had, under the said document, granted permission to Malhu Ram for a period of 10 years, i. e. from 1347 to 1356 fasli to plant guava trees on said plots on an annual rent of Rs. 10/ A kabuliat was also executed by Malhu Ram referring to some terms, which is annexed as Annexure 10 to the writ petition. It was urged by the learned counsel for the opposite parties that Annexure D5 was, as a matter of fact, a lease and it cannot be construed to be merely a licence for planting guava trees on the land in dispute. Learned counsel pointed out that in the said document itself it is referred that it is a lease and has been executed as such. It was contended that mere recital in the document that Malhu Ram was given said plots for the purpose of planting guava trees thereon, then merely by this recital the lease cannot be confined for planting guava trees thereon and the lessee Malhu Ram had acquired subtenancy rights in the said plots on the basis of said lease which was granted to him by the statutory tenant Ram Lal. Learned counsel further contended that since Malhu Ram had planted guava trees on the plots in dispute, hence he became grove holder and not merely a licensee.

5. In reply, learned counsel for the petitioner had urged that a perusal of the said document Annexure D5 would indicate that Ram Lal who was statutory tenant had not granted agricultural Sublease in favour of Malhu Ram and the plots in question were not sublet by him to Malhu Ram for cultivation. He was merely permitted to plant guava trees during period from 1346 to 1352 fasli on an annual rent of Rs. 10/ though there is a recital in the document that it is a lease, but simply by it, it would not amount to an agricultural Sublease granted by Ram Lal for a period of 10 years. The stipulation regarding payment of Rs. 10/ as annual rent to be charged from Malhu Ram for planting guava trees on the said plots would also not amount to a sublease granted by Ram Lal to Malhu Ram. It was also urged by the learned counsel that statutory tenant could not grant an agricultural sublease for a period more than two years without the permission of the landlord as was envisaged under Section 68A of the Oudh Rent Act. The said document, Annexure D5, cannot be construed to be a sublease granting subtenancy rights in favour of Malhu Ram. He, therefore, could not claim AdhivasiSirdrai rights nor any right as a grove holder in the plots in question.

6. I have carefully considered the aforesaid arguments and I have also perused the aforesaid alleged lease Annexure D5 executed by Ram Lal and Kabuliyat, Annexure 10, executed by Malhu Ram. In order to ascertain whether said document, Annexure D5, would amount to lease or licence, it appears necessary to notice the distinction between a lease and a licence. A reference may be made to Section 105 of the Transfer of Property Act, which defines a lease of immovable property as a transfer of a right to enjoy such property made for a certain time in consideration for a price paid or promised. Under Section 108 of the said Act, the lessee is entitled to be put in possession of the property. A lease

is therefore a transfer of an interest in land. The interest transferred is called the leasehold interest. The lessor parts with his right to enjoy the property during the term of the lease, and it follows from it that the lessee gets that right to the exclusion of the lessor.

7. Under Section 52 of the Indian Easements Act. the term "licence" has been defined thus :

Where one person grants to another, or to a definite number of other persons, a right to do or continue to do, in or upon the immoveable property of the grantor, something which would in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a licence. ?

Referring to aforesaid provisions, the Hon'ble Supreme Court in Associated Hotels of India Vs. R. N. Kapoor (AIR 1959 SC 1262) Observed :

The following propositions may, therefore, be taken as well established :

(1) To ascertain whether a document creates a licence or lease, the substance of the document must be preferred to the form;

(2) the real test is the intention of the parties whether they intended to create a lease or a licence;

(3) if the document creates an interest in the property, it is a lease, but if it only permits another to make use of the property, of which the legal possession continues with the owner, it is a licence; and

(4) if under the document a party gets exclusive possession of the property "prima facie" he is considered to be a tenant, but circumstances may be established which negative the intention to create a lease.

8. In Sohan Lal Naraindas Vs. Laxmidas Raghu Nath Gadit, 1971 (1) SCC 276 the Hon'ble Supreme Court observed :

The intention of the parties to an instrument must be gathered from the terms of the agreement examined in the light of the surrounding circumstances. The description given by the parties may be evidence of the intention but is not decisive, Mere use of the words appropriate to the creation of a lease will not preclude the agreement operating as a licence. A recital that the agreement does not create a tenancy is also not decisive. The crucial test in each case is whether the instrument is intended to create or not to create an interest in the property the subject matter of the agreement. If it is in fact intended to create an interest in the property it is a lease, if it does not, it is a licence. In determining whether the agreement creates a lease or a licence the test of exclusive possession though not decisive, is of significance.

(Emphasis supplied)

9. In the case of Qudratullah Vs. Municipal Board, Bareilly, 1974 (1) SCC 202, it

was observed by the Hon"ble Supreme Court :

?There is no simple litmus test to distinguish a lease as defined in Section 105, Transfer of Property Act from a licence as defined in Section 52, Easements Act, but the character of the transaction turns on the operative intent of the parties. To put in pithily, if an interest in immovable property, entitling the transferee to enjoyment, in created it is a lease; if permission to use land without right to exclusive possession is alone granted, a licence is the legal result. Marginal variations to this broad statement are possible and Exs."1" and "4" fall in the grey area of unclear recitals.....

10. In Halsbury"s Laws of England, Volume 23, the distinction in lease and licence has been described thus :

?1022. PRINCIPLES FOR DETERMINING WHETHER AGREEMENT CREATES LEASE OR LICENCE. In determining whether an agreement creates between the parties the relationship of landlord and tenant or merely that of a licensor and licensee the decisive consideration is the intention of the parties. The parties to an agreement cannot, however, turn a lease into a licence merely by stating that the document is to be deemed a licence or describing it as such; the relationship of the parties is determined by law on a consideration of all relevant provisions of the agreement, nor will the employment of words appropriate to a lease prevent the agreement from conferring a licence only if from the whole document it appears that it was intended merely to confer a licence. In the absence of any formal document the intention of the parties must be inferred from the circumstances and the conduct of the parties.

?1023. NATURE OF GRANT OF EXCLUSIVE POSSESSION

The fact that the agreement grants a right of exclusive possession is not in itself conclusive evidence of a tenancy, but it is a consideration of the first importance.

In deciding whether a grantee is entitled to exclusive possession regard must be had to the substance of the agreement. To give exclusive possession there need not be express words to that effect; it is sufficient if the nature of the acts to be done by the grantee requires that he should have exclusive possession.

The grant of an exclusive right to a benefit can, however, be inferred only from language which is clear and explicit. If an exclusive right of possession is subject to certain reservations or to a restriction of the purposes for which the premises may be used, the reservations or restriction will not necessarily prevent the grant operating as a lease.

?1024. WHEN GRANT CONFERRING EXCLUSIVE POSSESSION OPERATES MERELY AS LICENCE. A grant which confers the right to exclusive possession may operate as a licence in the following circumstances which negative the intention to create a lease.

?1025. INSTANCES OF AGREEMENTS CREATING

A licence is normally created where a person is granted the right to use premises without becoming entitled to exclusive possession thereof, or the circumstances and conduct of the parties show that all that was intended was that the grantee should be granted a personal privilege with no interest in the land. If the agreement is merely for the use of the property in a certain way and on certain terms while the property remains in the possession and control of the owner, the agreement will operate as a licence, even though the agreement may employ words appropriate to a lease. ?

11. In view of the above it appears well settled that if a document gives only a right to use the property in a particular way or under certain terms while it remains in possession and control of the owner, it would be licence. The legal possession thereof, continues to be with the owner of the property and the licensee is permitted to make use of the premises for a particular purpose. But for the permission, his occupation would be unlawful. It does not create in his favour any estate or interest in the property. There is, therefore, clear distinction between the two concepts. The dividing line is clear though sometimes it becomes very thin or even blurred. At one time it was thought that the test of exclusive possession was infallible and if a person was in exclusive possession of a premises, it would conclusively establish that he was a lessee. But there was a change and the recent trend of judicial opinion is reflected in *Errington v. Errington*, 19521 All ER 149, wherein Lord Denning reviewing the case law on the subject summarizes the result of his discussion thus at page 155:

?The result of all these cases is that, although a person who is let into exclusive possession is, "prima facie", to be considered to be tenant, nevertheless he will not be held to be so if the circumstances negative any intention to create a tenancy. ?

12. In the light of above observations in *Associated Hotels case* (Supra) it is to be seen in the instant case as to whether by aforesaid document Annexure D5, it was intended to create subtenancy in respect of plots in dispute by Ram Lal in favour of Malhu Ram or not or whether the said document was merely a licence to plant guava trees on the land in question. In order to ascertain whether the said document creates a licence or a lease, the substance of the document must be preferred to the form. Although there is a recital in the document that it is a lease, but its nomenclature will not make it a lease. In fact no transfer of leasehold interest has been made in the land by it. A perusal of Annexure D5 would indicate that Ram Lal, who was statutory tenant of the plots in question, had given land to Malhu Ram for planting guava trees thereon. He was not given right to cultivate the land. It, therefore, cannot be construed to be an agricultural sublease although the land in question was given to Malhu Ram for planting guava trees on the annual rent of Rs, 10/-. A statutory tenant under Section 68A of the Oudh Rent Act could grant a sublease for cultivation with consent of the landlord for a period of two years. But in the document D5, the period of ten years is mentioned. Such a lease, therefore, could not be granted by Ram Lal.

There is also no recital in the deed that Ram Lal had obtained permission of the landlord for executing such a Lease. This document, therefore, cannot be construed to be creating sublessee rights in the land in dispute, although Malhu Ram could be taken to have received possession in pursuance of said document on the terms contained therein for the purpose of planting guava trees on the land in question. But the test of exclusive possession for determining whether it was lease or licence does not appear to be of much relevance because even a licensee may come in exclusive possession over the property in pursuance of the agreement. Thus, although a person who is let into exclusive possession is prima facie construed to be lessee of the land nevertheless he will not be held to be so if the circumstances negative any intention to create a tenancy therein. The intention of the parties is to be gathered from the facts and circumstances, for ascertaining the character of the document. If a thing which could not be legally performed and executed in the manner it has been done, then in the absence of any evidence to prove otherwise, it cannot be assumed that such thing was intended to be performed specially when it could not be legally done like that. No presumption can be drawn about the intention for doing an act which could not be legally done by a person. In the instant case, as already stated above, Ram Lal who was statutory tenant could not execute such a sublease under Section 68A of the Oudh Rent Act. It, therefore, cannot be assumed that Ram Lal by executing the document annexure D5 as a matter of fact intended to grant sublease rights to Malhu Ram although such a lease could not be legally granted.

13. It, was, however, urged by the learned counsel for the petitioner that by the alleged lease in question Annexure D5, Malhu Ram was granted permission to plant guava grove on payment of Rs. 10/ as annual rent. Thus, according to the learned counsel Malhu Ram became grove holder of the plots in dispute having planted guava trees thereon for which permission was specifically granted in the said document. It was further urged that the intention to grant sublease by Ram Lal for planting guava grove by Malhu Ram is quite evident and it can in no manner be said that Malhu Ram was merely a licensee permitted to plant guava trees on the plots in question. I am unable to agree with this contention as well.

14. It cannot be disputed that during period of Oudh Rent Act and also under the U.P. Tenancy Act, a tenant could not plant grove without expressed permission of the landlord granted to the tenant for planting a grove. A grove holder is defined under Section 205 of the U.P. Tenancy Act, which is extracted below :

205. Definition of groveholders: Person who has planted a grove,

(a) on land which was let or granted to him by a landlord, for the purpose of planting a grove;

(b) with the written permission of the landlord or in accordance with local custom entitling him to do so, on land which he held as a tenant other than as a subtenant, a permanent tenureholder or a fixed rate tenant or a tenant holding on special terms in Oudh or an occupancy tenant in Oudh.

(Emphasis supplied)

15. A careful perusal of the aforesaid provision would indicate that a subtenant cannot plant grove on the land held by him. Thus, if a subtenant plants trees on the land in such a number as may constitute a grove, he would in no manner acquire grovelease right under Section 205 of the U.P. Tenancy Act. In this view of the matter it cannot be construed that by planting guava trees on the land in dispute in pursuance of aforesaid document Annexure D5 Malhu Ram acquired grove holders right nor said document can be construed to grant him permission to plant guava grove on the land in dispute. Thus, it cannot be accepted that by the aforesaid document Malhu Ram acquired rights as a subtenant or as a groveholder in the land in dispute. He, at the most, would be said to be a licensee having right to plant guava trees over the plots in question for a period of ten years. Such a licence could be granted by Ram Lal being not contrary to any provisions contained in the Oudh Rent Act. After expiry of ten years period he could not have a right to claim to continue in possession over the land in dispute as he acquired no title in it either as a sublessee nor as a grove holder there of.

16. It was next contended by the learned counsel for the opposite party that since the aforesaid deed, Annexure D5, could not be executed for a period of more than two years without the permission of the landlord, and, as such, the lease being void, possession of lessee Malhu Ram would be that of a trespasser from the very inception and as he continued to remain in possession till 1961, when he was forcibly dispossessed from the land by the petitioner, he had already perfected Sirdari rights by adverse possession prior to his dispossession. It was further urged by the learned counsel that the aforesaid Deed Annexure D5 was a valid sublease and although the sublease could not be executed for more than two years without permission of the landlord, but merely on that ground the sublease will not become invalid as Ram Lal had in fact intended to grant sublease in respect of plots in dispute in favour of Malhu Ram further directing him to plant guava trees thereon during lease period of 10 years.

17. I am unable to agree with the contention. If an act which could not be legally performed and the conveyance of property could not be made in the mode and form suggested, then the document of conveyance, be it a sale, gift or lease deed, cannot be attributed to bear that character which prima facie the executed deed does not disclose in spite of its nomenclature. Thus, since a sublease could not be executed by a statutory tenant for a period of more than two years without the consent of the landlord nor the land could be sublet for the purposes of planting grove thereon, and, as such, the deed in question executed by Ram Lal cannot be construed to be sublease nor it can be attributed that he had really intended to grant a sublease to Malhu Ram of the plots in question for a period of ten years for planting grove which could not be legally done by him. In the executed deed it has not been stated that sublessee rights are granted in the land and it contains merely a recital that Malhu Ram was given land merely to

plant guava trees thereon. Thus, in the absence of express grant of sublessee rights in the land, it cannot be construed to be a deed granting sublessee rights to Malhu Ram nor such intention can be attributed to Ram Lal that he purported to grant sublease of the land in question through said deed Annexure D 5 referred to above.

18. In view of the above I am of the opinion that Malhu Ram's possession over the land in dispute on the basis of said deed, Annexure D5, cannot be taken to be that of a sublessee, but as a licensee. Further, merely by planting guava trees by him thereon in pursuance of said arrangement he cannot be treated to be sublessee of the Groveland so as to acquire Asami rights under Section 21 (1) (b) as subtenant of grove land or under Section 21 (2) of the U.P. Zamindari Abolition and Land Reforms Act being occupant of grove land because a person holding the land as a licensee cannot be treated to be "occupant" entitled to get benefit of section 21 (2) of the said Act.

19. Learned counsel for the opposite party referred to Full Bench decision in the case of Paras Nath Vs. Board of Revenue (AIR 1986 All 111) (Full Bench) where it has been held that:

“A subtenant of land who plants trees either with permission or otherwise and converts land into grove land which continues to be so on the date of vesting then he becomes Asami of it.”

Referring to said decision learned counsel urged that since guava trees were planted by Malhu Ram in large number and on date of vesting the plots in dispute were of the character of grove and, as such, Malhu Ram became Asami tenant of it. I am unable to agree with the contention as well. As already observed above, Malhu Ram was not a subtenant of the land but he was merely a licensee permitted to plant trees during aforesaid period of ten years and so the aforesaid decision in Paras Nath's case (Supra) is of no assistance in the instant case.

20. In the above noted Paras Nath's case, it has been held that if a subtenant of Land plants trees, either with permission or otherwise, and converts the land into grove land which continues to be so on the date of vesting then he becomes Asami of it. This decision, in my opinion, would be applicable to those cases where subtenant plants trees and converts land in his sub tenancy into a grove and not to those cases where trees are planted on land by a licensee, which may bear character of grove by plantation of trees by him thereon in large number.

21. It appears to be fairly well settled that a licensee would not acquire sublease rights merely on the ground of doing cultivation or plantation of trees over the land in question nor he would acquire tenancy rights by prescription on the basis of possession continuing even after expiry of the period. A licensee after expiry of the period of licence would continue to hold the property in the same capacity and his possession would not automatically become adverse to rightful owner nor he would legally prescribe rights by adverse possession merely on the basis of

his continuing in possession even after the expiry of time stipulated in deed of licence. If after expiry of period of licence the licensee delivers possession to the licensor, which he would be legally bound to do, and thereafter retakes possession of property, then in that event he would be entitled to acquire title by prescription by his subsequent continuous adverse possession against the owner for more than the prescribed period of limitation from said point of time and not otherwise. The well settled rule is that a licensee who has obtained possession on account of licence, must first surrender possession before he can be allowed to show that his licensor's title has determined. Denial of title does not sanction forfeiture of licence as in the case of lease (See *Punnammia Vs, Tenkata*, AIR 1953 Madras 456). A licensee, however, is not precluded from following up a claim of adverse possession even though he has not surrendered his possession provided he has openly denied the permissive nature of his possession and asserted a hostile claim (See *Bodhan Vs. Bhundol* AIR 1965 All 309). But in the instant case no such case has ever been set up that after expiry of aforesaid period of ten years, Malhu Ram had surrendered possession and subsequently obtained possession of the land in dispute or that he had openly denied permissive nature of his possession of the land in dispute nor he had asserted hostile claim of title in the land in question. Malhu Ram, therefore, cannot be said to have acquired Asami or Sirdari rights in the disputed plots and I do not find any merit in the aforesaid contentions of learned counsel of the opposite party.

22. Thus, the impugned order passed by the Deputy Director of Consolidation, holding the opposite party No. 4 Malhu Ram to have acquired Asami/Sirdari rights in the land in dispute having not been evicted under Section 202 of the U.P. Zamindari Abolition and Land Reforms Act within one year from the date of vesting cannot be sustained being unwarranted in law and facts of the case.

23. In the result, Writ Petition succeeds and is hereby allowed and the impugned orders passed by the consolidation authorities are hereby quashed and the petitioner being Bhumidhar of the aforesaid plots in dispute is directed to be recorded as such in the relevant concerned records.

24. No order as to costs.