

**(1922) 02 AHC CK 0008**  
**In the Allahabad High Court**

Tan Secretary of State for India in Council

APPELLANT

Vs

Mulla

RESPONDENT

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**Date of Decision :** 06-02-1922

**Acts Referred:**

**Citation :** AIR 1922 All 57 : 66 Ind. Cas. 582

**Hon'ble Judges :** Stuart, J

**Bench :** Single Bench

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### Judgement

1. The facts of the suit out of which this appeal arises are that Mulla Kachi has been in possession of three plots Nos. 1594/1, 1594/2 and 1601 situated in Shahjahanpur Cantonments for over 20 years before the date of suit. He has been cultivating these plots which are of an aggregate area of about half an acre. He put abated the plot by three sale-deeds, the first of the 10th of January 1895, the Second of the 20th of July 1896 and the third of the 14th of August 1896. On the evidence, he has never paid any rent in respect of these plots and his title to occupy the tame was never challenged until the institution of the present proceedings. It would appear that in the year 1911 Babu Shimbhu Narain was appointed as Record Officer for the Shabjahanpur Cantonments, Until this appointment, Mulla had been entered as proprietor of plots Nos. 1594 I and 1594-2, other persons being recorded as proprietors of No. 1601, Babu Shimbhu Narain altered the entry and declared Mulla to be a tenant, Mulla holds other Cantonment land admittedly as a tenant. Later on, the rent of these three plots was recorded as Rs. 5-8-0. In 1916 the Cantonment Authorities sued to eject Mulla under the Tenancy Act as a tenant-at-will from the half acre in question in the Court of an Assistant Collector. The plaintiff describes him as a non-occupancy tenant. The suit was decreed. Mulla appealed to the District Judge. The District Judge found on the merits that Mulla was proprietor of Nos. 1594-1 and 1594-2 and a portion of 1601. He directed his ejectment from the remaining portion of 1601. The Secretary of State appeals to this Court against the partial dismissal of the claim demanding that Mulla be ejected from all the three plots.

2. The first point for decision is, whether a Bent Court had jurisdiction. I find that the Rent Court had no jurisdiction in the matter. The Tenancy Act applies to the territories administered by the Governor of the Province of Agra with the exception of certain specified areas. The land in dispute is situated in Cantonments. Cantonments are under the direct administration of the Government of India. This is clear from Army Regulation, Volume II, Article 406, and the following articles. The suit was thus instituted in a Court which had no jurisdiction to decide it. If the land had been land to which the Tenancy Act applied, Mulla must have been held to have acquired occupancy rights over two of the numbers and a portion of the third, but as the Tenancy Act has no application, he has not obtained the privileges of an occupancy tenant. Mulla took the objection in the Court of first instance that the suit had been instituted in the wrong Court. The appeal lay, in any circumstances, to the District Judge, as he asserted proprietary title. Section 197 of the Tenancy Act thus has application and, as I have before me all the materials necessary for determination, I must dispose of the appeal as though the suit had been instituted (as it should have been) in a Civil Court, I thus take it as an ordinary suit for ejectment. What is the position of Mulla? There can be only one answer to that question. There is a very long series of decisions from 1866 onwards; *Carey v. Robinson* 1 Ind. Jur. 88; *Bourke* 399. *Babu Ramchand v. Collector of Mirzapur* (1868) N. W. P. H. C. R. 7. *Patterson v. Secretary of State* 3 A. 369; (1881) A. W. N. 45 : 2 Ind. Dec. 394. *Secretary of State v. Jagan Prasad* 6 A. 148; . (1884) A. W. N. 6 : 3 Ind. Dec. 758. *Secretary of State v. Vamanrav Narayan Chiplunkar* 30 B. 137 : 7 B L. R. 785. *Bank of Upper India Ltd, Mussoorie v. Secretary of State* 8 Ind. Cas. 1096 : 33 A, 229 : 7 A. L. J. 1194. and *Kaikhusr Aderji Ghaswala v. Secretary of State* 12 Ind. Cas. 117 : 36 B. 1 : 15 C. W. K. 909 : 10 M. L. T. 97; (1911) 2 M. W. N. 23 : 14 C. L. J. 268 : 13 B L. R. 788 : 8 A. L. J. 1219 : 21 M, L. J. 1100 : 38 I. A. 204 (P. C). The last decision is a decision of their Lordships of the Privy Council. From these decisions it is clear that the Secretary of State is absolute owner of all Cantonment land, unless it can be proved satisfactorily that he has parted with the ownership. In the absence of evidence, as is the case here, all Cantonment land belongs to the Secretary of State. There can be no adverse possession against him. The only position open to a person occupying land in Cantonments which has not been specifically transferred by the Secretary of State, is the position of a tenant or the position of a licensee. It has been found on the facts that Mulla is not a tenant. He has never paid rent. His position is thus that of a licensee, and it is open to the Secretary of State to eject him at will by revoking his license. This appeal must, therefore, succeed.

3. I have asked the learned Government Advocate to consider the advisability of representing to the proper Authorities that this is a hard case. Mulla purchased what he believed to be proprietary rights in Shahjahanpur Cantonments over 20 years ago. The Cantonment Authorities did not question his title until 1911. From that year they have all along permitted him to remain in occupation of this land.

They assigned no reason for ejecting him. The case would be a hard case in any circumstances. It is particularly a hard case in view of the fact that Shahjahanpur Cantonments, although it remains a Military Cantonment in name, has for many years not been occupied by troops. There seems to be no suggestion that the cessation of cultivation over this area is necessary in the interests of the safety of Shahjahanpur. If the object of this suit has been to assert the Secretary of State's proprietary title, that object will be sufficiently gained by my decree, and Mulla might, then, be restored to the occupation of the land if he agrees to pay rent for it. In the result, I decree this appeal, but inasmuch as the Secretary of State instituted the suit in a wrong Court on a wrong cause of action and on assertions which he was unable to prove, I direct that the plaintiff pay his own costs throughout and those of the defendant.