

## ALLAHABAD HIGH COURT

Mst. Jaini

Vs.

Ram Prasad

Second Appeal No. 50 of 1947

( Malik, C.J. and P.L. Bhargava, J.)

21.04.1952

### JUDGMENT

**Malik, C.J.**

1. This is a defendants' appeal against a decision of the Civil Judge of Lucknow partly allowing an appeal against the decree passed by a Munsif.

2. One Nanku, who is now dead and is represented by his legal representatives, filed a suit against the defendants-appellants on the ground, that the property in dispute belonged to Bhau, who was the last male owner. Bhau died in 1923, and was succeeded by his widow Srimati Lachmin. Lachmin died on 21-6-1944. She had a brother, Kusher, whose widow is Jaini. Kusher had two sons Gur Prasad and Ganga Prasad. Jaini, Gur Prasad and Ganga Prasad are defendants 1, 2 and 3. The plaintiff claimed that on the death of Lachmin in 1944, he, as the brother's son of Bhau, became entitled to the entire property as the next reversionary heir. The property in suit consisted of a house and a gonda on plot No. 763, a courtyard with certain trees and a well which were in plot No. 762 and tenancy plot No. 2909 with an area of 16 biswas. The trial Court held that Nanku was the reversionary heir of Bhau and decreed the suit. The lower appellate Court modified the decree as regards the courtyard and the trees and the well in it on the ground that these properties belonged to Bhau and Dudi half and half and the plaintiff could only get a decree for the half share of Bhau. It is admitted that at the time of his death in 1923 Bhau was a statutory tenant. The widow was, therefore, entitled to remain in occupation of the property for a period of five years from Bhau's death. Under Section 48, Oudh Rent Act, as amended by Act IV (4) of 1921, the widow remained in possession for five years and by remaining in possession for a further period of three years as required by the Explanation to Section 3 (18), Oudh Rent Act she acquired the rights of a statutory tenant. As we have already said, she died in 1944, and the question is whether Section 36 or Section 37, U. P. Tenancy Act applies to the succession. In the Oudh Rent Act of 1866, there was no right of inheritance in an estate of an ordinary tenant who

had merely the right to remain in possession for a period of seven years, and if he died before the expiry of that period his heir could remain in possession for the unexpired portion of those seven years. The Amending Act of 1921 created statutory tenancy and gave the heir of the deceased tenant a right to remain in occupation for five years and if thereafter the landlord did not eject him within three years, he in his turn became a statutory tenant. The Oudh Rent Act made no difference between a female tenant and a male tenant. The U. P. Tenancy Act, however, makes elaborate provisions for succession to the tenancy of male and female tenants. Section 35 gives a list of persons who are entitled to succeed to a male tenant. Section 37 gives a list of persons who are entitled to succeed to a female tenant. Section 36 applies to a tenancy which was in possession of a female tenant who had inherited the same as a widow or as a daughter etc. and makes the rule of succession given in Section 35 applicable to it.

3. It may be necessary to quote the relevant portion of Section 36 which is as follows :

"When a female tenant.....who either before or after the commencement of this Act has inherited an interest in a holding as a widow, as a mother, as a stepmother, as a father's mother or as a daughter dies..... such holding.....shall devolve in accordance with the order of succession laid down in Section 35 on the heir of the last male tenant, other than a tenant who inherited as a father's father under the provisions of that section."

The only point for decision, therefore, is whether Lachmin in the year 1923, when her husband died, inherited an interest in the holding as a widow. It is true that the mere fact that she was the widow of Bhau gave her only the limited right of remaining in occupation for five years and thereafter acquiring statutory tenancy rights by remaining in possession for a further period of three years, but there can be no doubt that she could become a statutory tenant by remaining in possession for this total period of eight years only because she was the widow and heir of Bhau. Section 36 does not require that the tenancy as such should have been inherited by the widow. All that it provides is that the widow should have inherited an interest in the holding. The mere fact that she had to remain in possession for a further period of eight years before she could become the statutory tenant of the holding does not mean that she acquired no interest in the holding as a widow. We fail to see how it could be said, in view of the language of Section 36, that her acquisition of statutory rights had nothing to do with the fact that she had inherited an interest in the holding as widow of Bhau. Section 36 was thus clearly applicable.

4. A learned single Judge of this Court in more or less similar circumstances has applied Section 36 in an unreported decision, *Sital v. Suraj Din*<sup>1</sup>, There the widow died in October, 1940. Her husband had died in 1916, and by remaining in possession for the requisite period of eight years she had become a statutory tenant. The learned Judge said :

"We can assume that she acquired on the passing of the new Act (Act 4 of 1921) a fresh statutory period and a renewal of the tenancy but that does not take away the origin of her title.....Is only when a female tenant acquires tenancy rights which do not have their

origin in inheritance that the case could be taken out of the ambit of Section 36 to be governed by Section 37."

We agree with this view.

5. The result, therefore, is that this appeal fails and the decree of the lower appellate court

<sup>1</sup> Second Appeal No. 421 of 1943, date 20-12-1948

is affirmed. The respondent is entitled to his costs. The stay order is discharged.

Appeal dismissed.