ALLAHABAD HIGH COURT

Bharat

Vs.

Ch. Khazan Singh

Second Appeal No. 1192 of 1948. , against decision of 1st Civil Judge, Meerut
(M.C. Desai and J.N. Takru, JJ.)

18.05.1948. 29.07.1957

JUDGMENT

M. C. Desai, J.

1. This is an appeal by the defendants from a decree for possession of a plot of land passed against them by the courts below. The suit was instituted against the appellants by the respondent on the following allegations :

> "I am the owner and zamindar of plot no.- 424/1, situated, in khewat khata No. 1 of village Akbarpur Sagar. It was lying vacant. On a portion of it the defendants in my absence and without my consent and without any right ortitle constructed a house a year ago and have brought the remaining area of the plot into their use." It was contested on various grounds with which we are not concerned now. It was decreed by the trial court in 1947 and the appellants were allowed to remove the building within a certain time. The decree was affirmed on appeal in 1948. After the institution of the second appeal, the Zamindari Abolition and Land Reforms Act has come into force and the appellants contend that on account of the provisions of Sections 6 and 9 the respondent has lost his title and interest over the land in dispute, that the appellants have ceased to be liable to ejectment and that consequently the decree should be quashed.

It is provided in Section 4 of the Act that from a date to be specified by the State Government all estates situate in Uttar Pradesh shall vest in the State and shall stand transferred to it free from all encumbrances. The date specified for this purpose by the Government is 1-7-1952 and by virtue of the provisions of Section 4 all estates stand transferred to, and vest in, the State. An estate is defined in the Act to mean "The area included under one entry in any khewat"; the plot in dispute is admittedly included under entry No. 1 of the khewat of village Akbarpur and is consequently an estate. The plot has thus vested in the State Government with effect from 1-7-1952. The consequences of vesting are enumerated in Section 6 of the Act.
They include inter alia the extinction of all rights, title and interest of all the intermediaries and their vesting in the State. The respondent admittedly is an intermediary and by virtue of Section

6, all his rights title and interest in the land in dispute have been extinguished and have vested in the State Government. The suit was brought by him on the ground that he was the proprietor of the land; since the vesting he has ceased to be the proprietor and is left with no right, title or interest.

When the only ground on which the suit was based has disappeared the decree passed in his favor cannot be maintained. It is to be noted that the suit was not based on possessory title; it was not a suit under Section 9 of the Specific Relief Act. Moreover he was not in possession of the land at the time of vesting, the possession admittedly being with the appellants; he might have been in possession prior to July 1945, but his possession was derived from his title and did not exist independently of it. When he lost the title, he lost the right to possession also. He admittedly lost actual possession in July 1945 and, therefore, on the date of vesting neither had he any title nor had he any possession nor had he any right to be in possession. The limitation for a suit under Section 9 of the Specific Relief Act is six months. If a person wants to recover possession simply on the ground of his possession, he must sue within six months; otherwise he must sue on title and must show a better title than the defendants.

The respondent could not show any title better than the appellants' after they had remained in peaceful possession for a year or more. In any case he could not have any better title on the date of vesting i. e., so many years later.

2. All building situated within the limits of an estate belonging to, or held by, an intermediary, tenant or other person are to continue to belong to. or to be held by, such intermediary, tenant or person, as the case may be, and the site is to be deemed to be settled with him by the State Government on such terms and conditions as may be prescribed; see Section 9. The building on the land in dispute belongs to the appellants. It was admittedly constructed by them. There is no dispute about the ownership; the respondent himself does not claim that it belongs to him. Since the building is situated within the limits of an estate, under Section 9 its site (together with the area appurtenant thereto) must be deemed to be settled with the appellants by the State Government. The appellants now are in lawful possession of the site of the building on account of the settlement and are not liable to ejectment. They might have been liable to be ejected as trespassers before the vesting but in consequence of the vesting, their possession on the site is to be deemed as the result of the settlement with the State Government in whom the land vests.

3. In the view that we take we are supported by *Manohar Lal v. Sulah Kumar*[1], decided by our brother V. Bhargava on 17-10-1952 (All) (A); *Tilak Ram v. Ram Singh*[2] decided by Sapru J., on 14-7-1952 (All) (B); and *Syed Mohammad Raza v. Ram Lai*[3], We were referred by Sri S. B. L. Gaur to two decisions in which a contrary view has been taken. They are *Pheku Chamar v. Harish Chandra*[4], and *Kumarji v. Bahorey Lal*[5], The previous decisions of our brothers V. Bhargava and Sapru are not noticed in the case of pheku Chamar (D). In that case Agarwal and M. L. Chaturvedi JJ., held that the benefit of Section 9 can be claimed only by that intermediary, tenant or person who is

[1](S. A. No. 1981 of 1950) [3]1955 All LJ 496 [5]1954 All LJ 693

[2](S. A. No. 95 of 1948) [4]1953 All LJ 197

in rightful possession of the land; with great respect we are unable to agree. There is nothing in the language of Section 9 to suggest that the site of a building is to be deemed to be settled with the intermediary, tenant or other person only if he is its lawful owner or holds it lawfully, and a Court has no authority to import the word "lawful" or its equivalent. The learned Judges found it difficult to understand why the Legislature should have given preference to trespassers over the rights of person shaving a title in the land. We may respectfully point out that the Legislature has given no such preference and that the trespassers' possession was recognized because that was the only right that remained and could be recognized as the right, title and interest of the rightful owner had been extinguished and had vested in the State. In the present case the respondent's right over the land in dispute was extinguished with effect from 1-7-1952; he had not constructed any building upon it and, therefore, the land could not be deemed to have been settled with him. If the appellants had not constructed the building, its site would have vested in the State Government and the respondent would have had no right over it. He has lost nothing by the site being deemed to have been settled with the appellants now. After the vesting and the extinction of the rights of the proprietors, it has now become amatter between State and trespassers, and the State could recognize the rights of the trespassers; there is nothing strange or improper in it. The only construction standing on the land in dispute is of the appellants and the Legislature thought it advisable to settle the site with them, instead of forcing them to vacate the site. The Legislature has used wide language in Section 9 and it covers the case of buildings belonging to persons who constructed them lawfully or unlawfully. When wide language was chosen it was not necessary for it to lay down expressly that the benefit of Section 9 can be availed of by trespassers also. In the case of Kumarji, Agarwala J., observed that the suit related not to abadi or buildings but to possession over a plot of land, that Section 9 applies to a case in which the intermediary whose estate vests in the State was himself in possession of the abadi or building and that the word "belong to" mean "validly belonging to." The land in dispute before us is abadi (and so was the land in dispute in the case of Kumarji) and the suit does relate to it, but we are not concerned with the questions whether the land in dispute is abadi and whether the suit relates to abadi. Section 9 does not use the word abadi at all and has no reference to any suit relating to abadi; the site of a building is to be deemed to be settled with the owner, regardless of where the building is situated and whether any suit in respect of the building or its site is pending or not. The site of a building is not to be deemed to be settled with any other person, if a trespasser has constructed a building, the site will be deemed to have been settled with him and not with the owner of the land. It will be deemed to have been settled with the intermediary if the building belongs to him and not otherwise. For these reasons we respectfully differ from the view taken by Agarwala and Chaturvedi JJ., and prefer to follow the view taken by Kidwai and H. S. Chaturvedi JJ., in the case of Syed Mohammad Raza (C).

4. We allow the appeal and set aside the decree passed by the Courts below. The suit of the plaintiff-respondent shall stand dismissed. Having regard to the circumstances of the case, we direct that the cost of this appeal shall be borne by the parties themselves, while the plaintiff-respondent shall get his costs of the courts below from the defendants-appellants.

Appeal allowed.