

# ALLAHABAD HIGH COURT

Ram Krishna

Vs.

Bhagwan Baksh Singh

Sp.A. No. 28 of 1959 (Appeal against the decree of Justice B.N. Nigam dated 16-7-1959)

(J.K. Tandon and R.A. Misra, JJ.)

20.01.1961

## JUDGMENT

### **J.K. Tandon, J.**

1. This is a special appeal against the judgment of a learned single judge dated 16-7-59, by which he dismissed the Appellant's suit for possession of two agricultural plots. The facts as found by the courts below and not disturbed by the learned-single Judge are that the Appellant was the tenant of these plots and he further ploughed and sowed them in the beginning of 1359 Fasli. The Fasli year begins on the 1st of July. He in this manner remained in possession of the plots until the middle of July when the Respondent forcibly entered upon them, upturned the crop which had been sown over them by the Appellant and thereafter himself reploughed and cultivated them. The Respondent claimed before the trial court that he was in occupation of the plots for the last over twenty or twenty two years but this was repelled. The facts as found thus are that Respondent was not in occupation earlier of the plots but he forcibly entered into occupation by throwing out the Appellant sometime towards the middle of July, 1951.

2. Founding his claim on his occupation of these plots during the rest of the Fasli year the Respondent claimed that he had acquired adhivasi rights Under Section 3 of the UP Land Reforms (Supplementary) Act, 1952. The section is to the effect that every person who was in cultivatory possession of any land during the year 1359 Fasli but is not a person who as a consequence of vesting Under Section 4 of the UPZA and LR Act, 1950 has become a bhumidhar, sirdar, adhivasi or asami shall be asami or adhivasi of the land according as his case fell u/Cl. (a) or (b) of the section. The learned single Judge finding that the Respondent was for a substantial part of the year in cultivatory possession of the plots upheld that he had acquired adhivasi rights.

3. In our opinion the facts of this case, have an important bearing on the true meaning to be given

to the fact of occupation by the Respondent. The section has laid down that a person who was in cultivatory possession of the land during the year 1359 Fasli shall, if he satisfies other conditions, be declared to be an asami or adhivasi, as he may be entitled to, of the land. As found by the courts below the Appellant who held a lease of the land from the landlord was in cultivatory possession of the plots until he was thrown out by the Respondent by effecting forcible entry. Whether the forcible entry effected by the Respondent and thereafter his continuing in occupation of the plots can be said to constitute his cultivatory possession over them is, indeed, the question for consideration. A person who through force inducts himself over and into some land and also succeeds in continuing his occupation over it cannot be said to be in possession of that land though he has occupation over it. The law will refuse to take notice of forcible entry over another's property in this manner or to give it the recognition of possession. Possession does not consist in mere acts of user, in other words, or of occupation alone, but the occupation must be with the intention of exercising some claim or right in respect of the property occupied. A person who has no claim to the property but succeeds by show of force in acquiring physical control over the same cannot be treated to be in its possession even though he may have physical control over it.

4. The case of the Respondent cannot in our opinion be placed higher than this. He had no right to this land- The Appellant was in possession of the same, still he forcibly entered upon it, upturned the crop sown by the latter and usurped the plots. As was held in the case of *Hemanta Kumari Debi v. Mianapur Zamindar Company*<sup>1</sup>, in order to constitute possession in a legal sense there must exist, not only the physical power to deal with the thing as one likes and to exclude others but also the determination to exercise that physical power on his own behalf. Where a person by show of force usurps occupation of another's land and over which he has no claim, he cannot be treated to exercise the physical power to deal with it on his own behalf. Animus which so often is considered essential in the concept of possession will be lacking in such a case. Viewing the case in the above background and thus interpreting the expression "cultivatory possession" used in S. 3 we are unable to hold that the Respondent acquired any adhivasi rights in the land in suit. That being so, the Appellant who is a tenant of the same was entitled to a decree for possession. The trial court gave him a decree for Rs. One hundred on account of compensation. He is entitled to this amount also.

5. We, therefore, allow the appeal, set aside the judgment of the learned single Judge and decree the suit for possession and damages amounting to Rs. 100 with costs throughout.

Appeal allowed.

<sup>1</sup> AIR 1942 Cal. 233