

NAGPUR HIGH COURT

Rahmatulla Khan

Vs

Mahabirsingh

Second Appeal No. 149 of 1947

(Mudholkar, J. On Difference of Opinion Between Sinha, C.J. and Hidayatullah, J.)

06.09.1946. 07.01.1955

JUDGMENT

Sinha, C.J.

1. (17-11-1954) :- This is a defendant's second appeal from the concurrent decision of the Courts below decreeing the plaintiff's suit for possession as modified by the lower Appellate Court in respect of 5.25 acres of 'khuakasht' land situate in mouza Mau, tahsil Bemetara district Durg.
2. The suit was based on the allegations that the defendant was the proprietor in respect of 0-2-8 share in the village and in that, capacity had 17 'khudkasht' fields measuring 9.18 acres : and that the defendant's interest in the village, including the 'khudkasht' lands, was sold at auction in a revenue case on 29-4-1936 and purchased by one Khubiram. The plaintiff claimed to be successor-in-title of the said auction-purchaser by successive deeds to transfer. The deed in the plaintiff's favour is dated 15-6-1943. The plaintiff's cause of action was based on the ground that the defendant had no right to keep in his possession the 'khudkasht' land, which along with the proprietary interest passed at the revenue sale aforesaid.
3. The suit was contested by the defendant on the grounds 'inter alia' that at the auction sale his khudkasht lands did not pass, that at any rate the plaintiff was not the purchaser of the khudkasht lands, as distinct from the proprietary interest, and that the defendant had continued all along in possession in spite of the sale and had thus acquired the right of occupancy which rights were confirmed in consolidation proceedings. It was thus contended by the defendant that the plaintiff's right was barred by limitation and estoppel.
4. The trial Court decreed the suit in its entirety overruling the defendant's contention. On appeal by the defendant the lower appellate Court confirmed the decree of the trial Court only to the extent of 5.25 acres and not of the entire 9.18 acres as claimed by the plaintiff on the ground that the plaintiff's sale deed did not include the entire land claimed. The lower appellate Court overruled the defendant's contention that in the absence of the sale certificate it could not be proved that the 'khudkasht' lands also had passed along with the proprietary share. The lower appellate Court also found that the defendant's share in the village along with 'khudkasht', if any,

had been ordered to be sold, and that the auction-purchaser had obtained symbolical possession of the property purchased, though there was no evidence that the plaintiff or his predecessors-in-title had ever been in actual possession of khudkasht lands. It also recorded the finding that in spite of the defendant's continuous possession ever since the date of the auction sale he had not acquired any tenancy interest by adverse possession or otherwise. With reference to the consolidation proceedings the Court of appeal below held that in spite of the finality attaching to the record of rights those proceedings could not in law hold good in respect of land which was not held by the defendant as tenant. Thus, according to the lower appellate Court the 'khudkasht' lands in question had been wrongly included in the consolidation scheme, particularly because no question in respect of those lands had been raised between the parties during the consolidation proceedings. The question of limitation had not been pressed by the defendant before the lower appellate Court hence, this second appeal is directed against the judgment and decree of the lower appellate Court awarding the plaintiff possession in respect of the 5.25 acres of 'khudkasht' land, which are specifically included in the plaintiff's sale deed.

5. In this Court the learned counsel for the appellant argued in the first instance that the plaintiff not having adduced in evidence the sale certificate, which was the root of the title, and this being a suit in ejectment he should have been non suited simply on the ground that he could not prove his title 'aliunde'. Reliance was placed upon a decision of their Lordships of the Judicial Committee in - *Rambhadra Naidu v. Kadiriyasami Naicker*¹, That case is an authority only for the proposition that a certificate of sale is a document of title which ought not to be lightly regarded or loosely construed. In that case the exact, question now before us did not arise for decision. The learned counsel for the appellant was not able to produce before us any authority in support of the proposition that a plaintiff suing in ejectment could not prove his title except by producing the sale certificate evidencing auction sale.

On the other hand the learned counsel for the respondents has drawn our attention to a number of decisions, viz., a Full Bench decision, of the Allahabad High Court in - *Jagan Nath v. Baldeo*², a decision of the Calcutta High Court in - *Basir Ali v. Nazir Ali*³, and a Full Bench decision of the Patna High Court in - *Tribeni Prasad Singh v. Ramasray Prasad Chaudhuri*⁴, which are clear authorities in favour of the proposition that a purchaser of immovable property at an auction sale his title by evidence independent of the sale certificate which does not create title but is merely evidence of title. Other cases referred to at the Bar have no direct relevance to the point in controversy. In view of the authorities referred to above it must be held that there is no substance in the contention raised on behalf of the appellant.

6. It was next contended that this suit must fail 'in limine' in view of the provisions of the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals Alienated Lands) Act, 1950 (No. 1 of 1951) as interpreted by a Special Bench of this Court in - *Chhote Khan v. Mohammad Obedullakhan*⁵, In my opinion, that decision cannot govern the present controversy. The Special Bench was dealing with suits instituted

by a 'lambardar, 'sadar lambardar', or proprietor in his character as such, for possession of land of the nature of 'abadi' site, or for pre-emption, or in respect of grass land.

The Special Bench by a majority held that as soon as the plaintiffs in those cases lost their character as proprietor, 'lambardar' or 'sadar lambardar' as a result of the Act aforesaid they could not continue the suit. That case did not relate to recovery of 'khudkasht' lands, possession of which had been wrongfully denied to the plaintiff by the defendant in possession. It is conceded that in terms that decision does not cover the present controversy, but the following observations

of Mudholkar, J. at p. 369 were relied upon in support of the contention that the Act had the effect of non-suiting the plaintiff in the instant case also :

"To give him possession now would be to augment his "home-farm" or "homestead" which the Abolition of Proprietary Rights Act does not contemplate. Since the landlord had not perfected his rights under the decree by obtaining possession before the date of vesting, he cannot, in my judgment be allowed to do so now."

7. In my opinion those observations are not the 'ratio decidendi' in the case; they are merely observations made with reference to the facts then in controversy. Those observations may be wide enough to cover the present controversy, but they have got to be read in the light of the facts and circumstances of the cases then before the Special Bench.

8. To give effect to the argument raised on behalf of the appellant in this case would be to hold that if a proprietor has been wrongfully dispossessed of a part of the property being 'khudkasht,' the defendant trespassing upon the property can claim to continue his trespass. A distinction has to be made between a suit brought by a proprietor in his character as such for possession of property which the law then in force authorized him to claim by a suit for the benefit of the entire body of proprietors and a suit based upon trespass upon his individual rights obtained by him irrespective of his character as such. In the instant case the plaintiff had purchased specific plots of 'khudkasht' lands and would have continued in possession in spite of the enactment of the Abolition of Proprietary Rights Act but for the defendant's trespass. The aforesaid enactment does not govern such a suit. It only substitutes the State for the proprietor in respect of such lands as are not occupied lands. That legislation terminates the character of the landlord as such but does not deprive him of his rights to possess specific lands as his 'khudkasht' or home farm or his own 'abadi' site which he has appropriated to his personal use and occupation; in other words, the Act aforesaid abolishes the intermediaries between the State and the actual occupier of land for cultivation or residential purposes or purposes subsidiary to those purposes, but does not altogether eliminate the interest of the proprietor who has acquired the right to hold specific plots of land as owner of the property. I am therefore of the opinion that the Special Bench decision of this Court referred to above is of no assistance to the appellant.

9. The only other ground urged in support of the appeal is that the plaintiff is estopped from claiming the plots decreed to him by the Courts below on account of what happened during the consolidation proceedings. Those proceedings were taken under the Central Provinces Consolidation of Holdings Act (8 of 1928). Under that Act in respect of the 'khudkasht' lands in question it was the plaintiff who was the permanent holder within the meaning of section 5 of the Act. It has not been claimed that the plaintiff must be deemed to be a party to the consolidation and thus bound by the order of the Consolidation Officer within the meaning of Section 6(4), because there is no evidence, not even a suggestion, that there was an application on behalf of all the permanent holders in the village, 'mahal' or 'patti' as contemplated in Section 6(2).

The plaintiff therefore was not bound by those proceedings and the learned counsel for the appellant did not base his argument on that footing. What he contended was that as a result of the consolidation proceedings the lands in respect of which the decree has been passed in favor of the respondents have got mixed up with the appellant's other lands, and it will thus be difficult, if not impossible, to take them out of the consolidated holding. But this argument is easily met by

which the learned Judge has pointed out in para 7 of his judgment. Section 27 of the Act bars jurisdiction of the civil Court to entertain any suit in respect of any matter which the Consolidation Officer is empowered by the Act to determine, decide or dispose of. The Consolidation Officer has not been empowered by the Act to determine a dispute of the kind now raised in this suit, that is to say, the Consolidation Officer had not been empowered to determine whether the disputed lands were the 'khudkasht' of the plaintiff or the occupancy land of the defendant. Such a controversy is wholly beyond the scope of the proceedings taken under the Act. No other provision has been brought to our notice to the effect that the suit of the kind we are now dealing with is barred by consolidation proceedings under the Act. The Court below was therefore entirely correct in overruling this contention also.

10. In the result the appeal fails and is dismissed with costs.

Hidayatullah, J.

11. I have had the advantage of reading the judgment which my Lord the Chief Justice proposes to deliver. This case has come before us on a reference by Mudholkar, J. who in making the reference observed as follows :

".....The question is whether the decision in AIR 1953 Nagpur 361 (FB) governs this appeal. As the question is not free from difficulty and as it has been raised in several appeals relating to Khudkasht land, I think it desirable that this appeal should be heard by a Division Bench....."

12. This case is by a proprietor who claims certain fields as his Khudkasht lands. They were thus not part of his 'home farm' when the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950, came into force. As my Lord has pointed out, the contention now raised is mainly based upon the observations of Mudholkar, J. in the cited case which run as follows :

"To give him (proprietor) possession now would be to augment his 'home farm' or 'home stead' which the Abolition of Proprietary Rights Act does not contemplate. Since the landlord had not perfected his rights under the decree by obtaining possession before the date of vesting, he cannot, in my judgment be allowed to do so now."

13. These observations of the learned Judge bear reference to suits for pre-emption filed by the proprietor against transferees of absolute occupancy fields. The nature of those cases is summarised by Mudholkar, J. in his opinion thus :

"The question which is raised in - '*Munna v. Gulabchand*⁶', is whether the decrees for pre-emption passed in favour of the landlords before the coming into force of the Madhya Pradesh Abolition of Proprietary Rights Act, 1950, could be executed upon applications for execution made after the Act came into force."

It is pertinent to point out that the suits for preemption were not instituted by the plaintiffs in their

character as 'lambardars'. This was conceded by my Lord in his opinion when he observed :

"The suits giving rise to these appeals or applications, as the case may be, 'except possibly the suits for pre-emption', have been instituted by the plaintiffs in their character as 'lambardar' or sadar lambardar". The learned Chief Justice on that occasion did not separately treat the cases of pre-emption. But his Lordship did observe that :

"In these suits if decrees were to be granted in favour of the outgoing proprietors or their statutory agent, the 'lambardar', in respect of 'abadi' sites or grass lands or 'tenancy lands acquired by third parties, or by co-sharer proprietors themselves,' admittedly they cannot keep those lands as their home-stead or home-farm land or 'in any other capacity' after the Act has taken effect."

(underlined (here in ' ') by me.)

14. My Lord the Chief Justice has conceded in his judgment (para 7) that the observations of Mudholkar, J. 'may be wide enough to cover the present controversy'. In my opinion, those observations as also those of my Lord the Chief Justice were the 'ratio decidendi' of the cases; otherwise, there is no foundation for deciding pre-emption cases which my Lord the Chief Justice observed were not brought by the plaintiffs in their character of 'lambardars'. The passage I have quoted from my Lord's opinion clearly shows that his Lordship was not concerned with mere 'lambardarship' but 'any other capacity'. Mudholkar, J. has further elucidated the point at p. 370 where his Lordship observes :

"As already pointed out, in so far as abadi sites are concerned, the transferees of these sites for consideration who were in possession of the sites at the date of the commencement of the Act were to continue in possession subject to such agreement as may be arrived at between them and the Government.

There is no such express provision regarding the lands which have been surrendered by a tenant to a co-sharer, or grass lands or lands which have been purchased by one tenant from another and is the subject of a suit for pre-emption. At the same time it must be remembered that unless any land falls within the definition of 'home-farm' or homestead' as contained in Section 2(g) and 2(h) respectively of the Act, or unless the land has been brought under cultivation by the landlord after the agricultural year 1948-49 but before the date of vesting, he can no longer claim any title thereto.

In so far as his remaining proprietary interest is concerned he has to content himself with the compensation that has been awarded to him. Having ceased to be a proprietor, he can no longer claim in a Court of law to exercise any right of a proprietor as from the date of the commencement of the Act." The gist of the two opinions thus is that the home-farm or homestead got settle on the date the Act came into force and no 'lambardar or proprietor' could thereafter continue a suit or execution which would tend to increase his 'home-farm' or 'homestead. If that is not the ratio of the decision relating to pre-emption cases, there is no other because the suit is not brought by a proprietor to enforce pre-emption in his capacity of lambardar but as a landlord.

15. The extent to which the ruling was carried is exemplified by - '*Pandurang v. Laxman*', D/- 24-3-1953 (Nag) by the Full Bench. In that case the revision application was only for the limited purpose which is best indicated by quoting the prayer clause. It reads :

"It is therefore prayed that this Honourable Court be pleased to set aside the order passed by the Court below and instead order the compromise to be recorded and pass a decree in accordance therewith."

Instead of deciding the petition as it stood, the entire suit of the plaintiff was ordered to be dismissed. Undoubtedly, the case was one of 'abadi' site; but if a compromise had already been reached in respect of that matter and all that was necessary was to record the compromise, the question whether the Act affected the suit itself was not quite relevant. The effect given to the ruling clearly shows that cases which were not completed before the Act came into force could not proceed along their normal course and had to be terminated if the character of the landlord or the proprietor was involved therein. I cite the case as reinforcing the argument which has appealed to me in the present case.

16. I regret the result which is unfortunate but I must give effect to the decision of the Full Bench. In my opinion, under the ruling this suit should be dismissed with no order about costs. Order of Reference : (25-11-1954).

Sinha, C.J. And Hidayatullah, J.

17. In view of the difference between us the following questions are referred to a third Judge for decision :

1. Does the Full Bench decision in AIR 1953 Nagpur 361 apply to the case of an ex-proprietor who has sued for possession of his own private property, viz., 'khudkasht' land ?
2. Does the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (1 of 1951) bar a suit by an ex-proprietor for recovery of 'khudkasht' lands purchased by him before the Act came into force ?

18. Let the case be placed before the Chief Justice for nominating a third Judge to resolve the difference.

OPINION: (21-12-1954).

Mudholkar, J.

19. This appeal has been referred to me upon a difference between Sinha, C.J. and Hidayatullah, J. (as he then was). The relevant facts are fully set out in the judgment of the learned Chief Justice. For the purpose of deciding the matter before me, it is sufficient to set out only some of them. The suit out of which this second appeal arises was brought by the deceased respondent Dau Balwantsingh as a 2 annas 8 pies proprietor in mouza Mau for possession of 9.13 acres of

'khudkasht' land. This land was purchased by one Khubiram along with the village share, which originally belonged to the appellant, at an auction sale held in a revenue case on 29-4-1936. Dau Balwantsingh was a successor-in-title of the said Khubiram. The deceased respondent's claim was decreed by the two Courts below. The decree of the lower appellate Court was challenged in second appeal on various grounds; but none of them has been accepted by the learned Chief Justice in his judgment. It was also urged before him that consequent on the passing of the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950, the respondent's suit should now be dismissed and in support of this contention reliance was placed upon the decision of the Special Bench of this Court in AIR 1953 Nagpur 361. The learned Chief Justice held that this case did not fall to be governed by that decision. Hidayatullah, J. did not concur in this view but has not expressed any opinion whatsoever on the other points. Both of them have, however, referred the following points :

1. Does the Full Bench decision in AIR 1953 Nagpur 361 apply to the case of an ex-proprietor who has sued for possession of his own private property, viz. 'khudkasht' land ?
2. Does the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (1 of 1951) bar a suit by an ex-proprietor for recovery of 'khudkasht' lands purchased by him before the Act came into force for being decided by a third Judge. I would therefore be justified in assuming that Hidayatullah, J. has concurred with the Chief Justice-on all points except the two referred to above.

20. In Chhote Khan's case the learned Chief Justice and myself took the view that the rights which were exercisable by the proprietor, 'lambardar' and 'sadar lambardar' by reason of holding that character could no longer be exercised by them, even though the cause of action, for enforcing those rights arose before the Madhya Pradesh Abolition of Proprietary Rights Act came into force. Hidayatullah, J. who was also one of the members of the Special Bench dissented from this view. In our view, actions commenced before the passing of the Act could not be continued by those persons after the date of vesting as they have ceased to hold that character. The question is whether the present suit can be regarded as having been brought by the respondent as a proprietor, 'lambardar' or 'sadar lambardar'.

21. It must be borne in mind that this is not a suit for enforcing a proprietary right on a right conferred by the Central Provinces Tenancy Act or the Central Provinces Land Revenue Act. It is merely a suit by an owner of a property for obtaining possession thereof from a wrong-doer and nothing more. In my opinion, such a suit is not affected by the Madhya Pradesh Abolition of Proprietary Rights Act and can be continued even after the date of vesting.

22. In Chhote Khan's Case (E) we were considering the effect of the Act on suits for possession of abadi sites, suits for pre-emption and on suits against co-sharers for possession of fields purchased by them without the consent of the lambardar. But we were not concerned with suits for possession of 'khudkasht' lands. These suits were instituted by the landlord or lambardar for enforcing the rights conferred by the Tenancy Act or the Land Revenue Act. They were not, as here, suits for enforcement of a right enjoyed by a person under the ordinary law. What was acquired by the State under the Abolition of Proprietary Rights Act was the proprietary right recognized in the various settlements and regulated by the Land Revenue Act and the Tenancy Act.

Rights incidental to the ownership of a property under the ordinary law have in fact not, been acquired nor were even intended to be acquired by the State under the Abolition of Proprietary Rights Act. Those rights are therefore still exercisable by the owners of the property.

23. Hidayatullah, J. has quoted the following from my opinion in Chhote Khan's case:

"To give him (Proprietor) possession now would be to augment his 'home-farm' or 'homestead' which the Abolition of Proprietary Rights Act does not contemplate. Since the landlord had not perfected his rights under the decree by obtaining possession before the date of vesting, he cannot, in my judgment, be allowed to do so now." And
"As already pointed out, in so far as abadi sites are concerned, the transferees of these sites for consideration who were in possession of the sites at the date of the commencement of the Act were to continue in possession subject to such agreement as may be arrived at between them and the Government. There is no such express provision regarding the lands which have been surrendered by a tenant to a co-sharer, or grass lands or lands which have been purchased by one tenant from another and is the subject of a suit for pre-emption.

At the same time it must be remembered that unless any land falls within the definition of 'home-farm' or 'home-stead' as contained in Section 2(g) and 2(h) respectively of the Act, or unless the land has been brought under cultivation by the landlord after the agricultural year 1948-49 but before the date of vesting, he can no longer claim any title thereto.

In so far as his remaining proprietary interest is concerned he has to content himself with the compensation that has been awarded to him. Having ceased to be a proprietor, he can no longer claim in a Court of law to exercise any right of a proprietor as from the date of the commencement of the Act"; and inferred from these observations that the home-farm or homestead got settled on the date the Act came into force and that no 'lambardar' or 'proprietor' could thereafter continue a suit or execution which would tend to increase his 'home-farm' or 'homestead'. He then observed :

"If that is not the ratio of the decision relating to pre-emption cases, there is no other because the suit is not brought by a proprietor to enforce pre-emption in his capacity of lambardar' but as a landlord."

24. It is clear from the documents on record that Khubiram had obtained possession of the land in suit after he purchased it along with the village share. The land was thus 'khudkasht' of Khubiram and accordingly it continued to be 'khudkasht' of the respondent who is a successor-in-title of Khubiram. No doubt, this land, though the 'khudkasht' of the respondent, was wrongly recorded as occupancy land of the appellant. But an erroneous recording of a 'khudkasht' land as an occupancy land would not in law alter the real character of that land. Thus, despite the wrong entry, the land must be regarded as having always been the 'khudkasht' of the respondent. If this Court affirms the decree of the two Courts below, the effect of its decision would not be to alter the character of the land and convert a land which is not 'khudkasht' into a 'khudkasht' land.

25. It will also not be correct to say that by upholding the decree in the respondent's favor the

'home-farm' land of the respondent would be augmented. 'Home-farm', as defined, in Section 2(g)(1), Abolition of Proprietary Rights-Act, means in relation to the Central Provinces,

- "(i) land recorded as 'sir' and 'khudkasht' in the name of a proprietor in the annual papers, for the year 1948-49, and
- (ii) land acquired by a proprietor by surrender from tenants after the year 1948-49 till the date of vesting."

26. It is true that this land was not recorded as 'khudkasht' of the respondent in the annual papers for the year 1948-49 but its character is that of 'khudkasht'. No doubt, it was not under the actual cultivation of the respondent but that was because of the wrongful act of the appellant. Since the respondent's predecessor-in-title had established his claim as long ago as in the year 1936 and the respondent's suit for possession was decreed in the year 1946, it was the duty of the revenue officer to make an appropriate entry in the jamabandi and other village papers. Had that been done, the annual papers for the year 1948-49 would have shown the land as, the respondent's 'khudkasht'. The duty of the revenue authority to make entries in the jamabandis and other village papers is a statutory one. Therefore, the requirement of Section 2(g)(1)(i), that land which was 'sir' or 'khudkasht' in the year 1948-49 was recorded as such in the annual papers of that year, necessarily implies that the statutory duty will have been properly discharged.

This provision cannot be so interpreted as to exclude from it 'sir' or 'khudkasht' land which, though established to be 'sir' or 'khudkasht' of a particular person, was, through an error or oversight of the revenue authorities, not recorded as the 'sir' or 'khudkasht' of that person in the annual papers for the year 1948-49. No person should be made to suffer for an error or omission on the part of an authority to perform its statutory duty. The Legislature must be deemed to have borne this principle in mind and therefore to have intended the aforesaid provision to include lands which were entitled to be recorded as 'sir' or 'khudkasht' in the year 1948-49 and which thus ought to have been so recorded in the village papers for that year. If this view is correct then there can be no question of the 'khudkasht' of the respondent being augmented subsequent to the date of vesting specified in the Act.

27. Reliance was placed before me on the following decisions of this Court: '*Bhaiya v. Pratapsingh*⁸', '*Samundabai v. Balwant*⁹', (Nag) and '*Kanhu v. Sadaram*¹⁰', (Nag), on behalf of the appellant, in support of the contention that the suit must be held to have become infructuous and so the decree in the respondent's favour should be vacated.

28. In S.A. No. 860 of 1946 (Nag) (H) though the plaintiffs had obtained a decree for possession of the 'khudkasht' fields, they could not cultivate them because the learned Judge who decided the case points out that the proceedings for delivery of possession were stayed by this Court on 15-10-1947. Such was the case here. Apart from that, the learned Judge has if I may say so, construed the provisions of section 2(g) of the Act too literally. I have already stated why in my judgment these provisions should be interpreted broadly. I therefore respectfully dissent from the view taken by the learned Judge.

29. 'S.A. No. 249 of 1953 (Nag), is distinguishable on the ground that there the suit was for the possession of 'khudkasht' land which was given to the defendants by the lambardar for enjoying the income therefrom in lieu of their rendering services as barbers to him and his heirs. Under

Section 59(3), Abolition of Proprietary Rights Act, every such person shall, from the date of vesting, be declared to be a raiyat and shall hold on such terms as the Deputy Commissioner may fix. For this reason, after the date of vesting, the former lambardar would not be able to eject such persons and obtain possession of the holdings.

30. In 'S.A. No. 1062 of 1946 (Nag), the suit was instituted by the plaintiff 'as lambardar'; while the present suit is not of that type. This case is accordingly distinguishable.

31. On behalf of the respondent reliance is placed on '*Sampatrai v. Narhari*¹¹', In that case the plaintiffs had sued to set aside an alienation of -/10/8 share made by their father in the year 1939. In the plaint they claimed possession of -/10/8 share of the village Jora with its appurtenant rights including 'sir', 'khudkasht', grass, 'banjar' and other lands, houses, kotha. 'dhaba' and all other rights and privileges appurtenant thereto. After the enactment of the Abolition of Proprietary Rights Act, the defendants

contended that the State was anecessary party to the suit and that the proprietary interest having vested in the State, the Court had no jurisdiction to try the suit. The plea was not accepted by the trial Court and therefore the defendants came up in revision. Relying upon the decision in 'Chhote Khan's Case, it was argued before this Court that the plaintiffs had no 'locus standi' to claim possession of the property which had vested in the 'State by virtue of the Abolition of Proprietary Heights Act. Choudhuri, J. who decided this revision application, no doubt, observed that the effect of the decision was that those rights which were acquired by the State under the Abolition of Proprietary Rights Act could not be properly claimed by the plaintiffs and that the plaint will have to be amended. He has, however, not said whether the right to claim possession of the 'sir' and 'khudkasht' land has vested in the State or has been lost to the plaintiff as a consequence of the Act. This decision therefore does not help the respondent.

32. Upon the view I have taken, my answer to the first question is in the negative. For the same reason, I also answer the second question in the negative.

33. In the result, I agree with the learned Chief Justice that the appeal be dismissed with costs and I order accordingly.

Hidayatullah, C.J. And Mudholkar, J.

33. JUDGMENT:- (7-1-1955) : In view of the answers given by the Third Judge (Mudholkar, J.) to the questions referred to him, this appeal fails and is dismissed with costs.

Appeal dismissed.

¹ AIR 1922 PC 252

² 5 All 305 (FB)

³ AIR 1916 Cal 319

⁴ AIR 1931 Pat 241

⁵ AIR 1953 Nag 361 (SB)

⁶ Misc. Appeal No. 62 of 1952 (Nag)

⁷ Civil Revn. No. 577 of 1949

⁸ S.A. No. 860 of 1946 (Nag)

⁹ S.A. No. 24 of 1953

¹⁰ S.A. No. 1062 of 1946

¹¹ Civil Revn. No. 8979 of 1951 (Nag)

