

1915

KEDAR  
v.  
DEO NARAIN.

determine the same according to law. Costs here and hitherto will be costs in the cause.

*Appeal decreed, cause remanded.*

*Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.*

1915  
July, 17.

NATHU AND ANOTHER (PLAINTIFFS) v. GOKALIA AND ANOTHER (DEFENDANTS)\*  
*Act (Local) No. II of 1901 (Agra Tenancy Act), section 22—Occupancy holding  
—Succession—Hindu Law.*

One P an occupancy tenant died while the Rent Act of 1881 was in force leaving a widow and a daughter him surviving. The widow entered into possession and died after the present Tenancy Act had come into force. The present suit was brought by the brothers and nephews of P to eject the daughter and to get possession of the holding. *Held* that the plaintiffs had no title either under section 22 of the Agra Tenancy Act or under Hindu Law.

THE facts of this case were as follows:—

The plaintiffs' suit was for possession of an occupancy holding. The holding at one time belonged to one Parbhu. He died before the present Tenancy Act came into force. He was succeeded by his widow, who remained in possession for a number of years and died after the present Act came into force. The plaintiffs alleged themselves to be brothers and nephews of Parbhu, and two of them allege that they were joint in cultivation with Parbhu. The principal defendant is the daughter of Parbhu. The court of first instance dismissed the plaintiffs' suit and this decision was affirmed by the lower appellate court.

Mr. M. L. Agarwala, for the appellants.

Pandit Mohan Lal Sandal, for the respondents.

RICHARDS, C.J., and BANERJI, J.:—This appeal arises out of a suit in which the plaintiffs claimed possession of an occupancy holding. The holding at one time belonged to one Parbhu. He died before the present Tenancy Act came into force. He was succeeded by his widow, who remained in possession for a number of years and died after the present Act came into force. The plaintiffs alleged themselves to be brothers and nephews of Parbhu, and two of them allege that they were joint in cultivation

\* Second Appeal No. 1175 of 1914, from a decree of Saiyid Muhammad Ali, District Judge of Moradabad, dated the 20th of May, 1914, confirming a decree of Harihar Prasad, Munsif of Haveli, dated the 20th of February, 1914.

with Parbhu. The principal defendant is the daughter of Parbhu. The court of first instance dismissed the plaintiffs' suit and this decision was affirmed by the lower appellate court.

On behalf of the appellant the case of *Musammatt Sumari v. Jageshar* (1) has been cited; also an unreported decision in Second Appeal No. 1148 of 1914. On the other side, the case of *Dulari v. Mul Chand* (2), and also the case of *Deoki Rai v. Musammatt Parbati* (3) are cited. It seems to us that the plaintiff in a suit for ejectment had to prove a title vested in him which gave him a right to the possession of the land in dispute. Section 22 of the Agra Tenancy Act provides for the devolution of the interest of an occupancy tenant, but it is perfectly clear from the language of the section that it only provides for such devolution where the tenant dies after the passing of the Act. If we regard Parbhu's widow as the full tenant of the occupancy holding, the plaintiffs have no right, because they are not the male lineal descendants of Parbhu's widow, nor did they share in the cultivation with her. If we consider that Parbhu was the last full tenant and that his widow only succeeded to a widow's estate, then it seems to us that section 22 of the Tenancy Act has not provided for the devolution in such a case. It is admitted that at the time of Parbhu's death the present plaintiffs could not have succeeded even if Parbhu left no widow. In the unreported case to which reference has been made a learned Judge of this Court says "the Board of Revenue appears to have taken a decided view that in circumstances like the present a succession would be governed by the provisions of section 22 of Act II of 1901." We doubt if this statement is quite accurate. So as far we are aware the practice of the Board of Revenue is to look upon the party who has succeeded to the occupancy holding as the "full tenant." We have pointed out that even if this be the true aspect, the plaintiffs would have no right to succeed. We think that in principle the present case is governed by the case of *Deoki Rai v. Parbati* (3). We think that the view taken by the courts below was correct and ought to be affirmed. We accordingly dismiss the appeal with costs.

*Appeal dismissed.*

(1) (1913) 23 Indian Cases, 7.

(2) (1910) I. L. R., 32 All., 314.

(3) (1914) 23 Indian Cases, 100.