

## APPELLATE CIVIL

*Before Sir Shah Muhammad Sulaiman, Chief Justice, and  
Mr. Justice Bennet*

AJODHYA PANDE (DEFENDANT) v. RAJNA AND OTHERS  
(PLAINTIFFS)\*

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April, 5

*Agra Tenancy Act (Local Act II of 1901), section 22—N.-W. P. Rent Act (XII of 1881), section 9—Occupancy tenant—Succession—Hindu widow succeeding to occupancy tenant before the Act of 1901—Succession to such widow on her death after the coming into force of that Act.*

Section 22 of the Agra Tenancy Act, 1901, was not intended to apply at all to the case of a Hindu widow who had, prior to the coming into effect of that Act, and in accordance with section 9 of the N.-W. P. Rent Act XII of 1881, succeeded to the estate of a Hindu widow in the occupancy tenancy of her husband; and upon the death of such widow, her heir was to be ascertained with reference to the Hindu law and not to the Tenancy Act of 1901. So, where an occupancy tenant died while the Act of 1881 was in force and his widow succeeded him, and the widow died while the Act of 1901 was in force, it was held that the daughter was entitled to succeed.

Mr. *Haribans Sahai*, for the appellants.

Dr. *N. P. Asthana*, for the respondents.

BENNET, J.:—This is a Letters Patent appeal by a defendant under the following circumstances. The opposite party, Mst. Rajna, was one of the plaintiffs in a suit asking for possession of an occupancy holding on the grounds that she was the daughter of Madho, who died some time previous to Act II of 1901, that Madho had been succeeded by two widows both of whom died during the pendency of Act II of 1901, the last widow dying in the year 1924, and that the defendants had interfered with her possession. The defendant appellant before us based his claim on two grounds, firstly that he was related to Madho and entitled to succeed Madho as a reversioner and secondly that he was one of the zamindars and he claimed that Mst. Rajna was not entitled to succeed to this occupancy tenancy on the

\*Appeal No. 86 of 1934, under section 19 of the Letters Patent.

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death of the last widow in the year 1924. The case raises difficult points of interpretation of section 22 of Act II of 1901. The learned single Judge has held against the appellant. Various rulings have been cited and it must be admitted that the rulings are very conflicting. The question is, where an occupancy tenant dies during the pendency of Act XII of 1881 and his widow succeeds and that widow dies during the pendency of Act II of 1901, who is entitled to succeed to the occupancy holding? On the one hand, various rulings have held that section 22 of Act II of 1901 applies and that the widow is to be taken as the occupancy tenant for the purpose of that section and that the order of succession prescribed by that section should be followed in relation to her. On the other hand, a number of rulings have laid down that in this case section 22 is not intended to apply and that the succession must be governed by the ordinary rules of the personal law which applies to succession to land as laid down in section 9 of Act XII of 1881, subject to the condition imposed by that section that no collateral relation shall succeed unless he shared in the cultivation. We confess that there is considerable difficulty in interpreting section 22 of Act II of 1901 and it is not at all clear whether it was or was not intended to apply to a case of this nature. To make the section apply to a case of this nature the aid of section 13 of the U. P. General Clauses Act will have to be invoked. Section 13 of that Act lays down that unless there is anything repugnant in the subject or in the context, words importing the masculine gender should be taken to include females. But we consider that there are things repugnant both in the subject and in the context. As regards the subject, the question is in regard to widows who in the case of Hindu widows are holding the estate of a Hindu widow in the tenancy in question. Such an estate is limited in the manner of Hindu law and the Hindu law provides a certain order

of succession by the reversioners on the death of the widow. If section 22 was intended to apply to those Hindu widows who were holding the interest of a Hindu widow when the Act came into force, then we would have expected to find a definite provision in section 22 to that effect, but the section is entirely silent as to what is to happen in the case of such widows, and the section does not purport at all to deal with widows. Then again when we come to the question of context, we find that in this section 22 there is a provision in sub-section (b) for the interest to devolve "on his widow till her death or re-marriage". As a female cannot have a widow this provision is therefore repugnant to making section 22 apply to female holders. From these considerations of the subject and the context we come to the conclusion that the table of succession in section 22 was not intended to apply to widows who had succeeded under section 9 of Act XII of 1881 to the interest of a Hindu widow in the tenancy of an occupancy tenant. Act II of 1901 provided in section 16 that "Every tenant having a right of occupancy under section 11, or under the corresponding provisions . . . of Act XII of 1881 . . . shall be called an occupancy tenant, and shall have all the rights and be subject to all the liabilities conferred and imposed on occupancy tenants by this Act." One of the rights under the Act is set forth in section 20(2): "The interest of . . . an occupancy tenant . . . is, subject to the provisions of this Act, heritable." The interest therefore remained heritable; but the Act did not contain any provision which applied to the order of inheritance in the case in question. Even under the general law apart from Tenancy Acts the interest of a tenant is heritable. In the Transfer of Property Act, Act IV of 1882, chapter V provides that the interest of a lessee is transferable, and therefore heritable; but section 117 bars chapter V applying to agricultural leases except when notified by

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the Local Government. In the Contract Act section 37 provides that "promises bind the representatives of the promisors in case of the death of such promisors before performance, unless a contrary intention appears from the contract." The fact that the occupancy tenancy remained heritable but that the order of succession was not affected is also shown by section 2(4), Act II of 1901, which provided: "All . . . rights acquired . . . under the enactments hereby repealed shall, so far as may be, . . . be deemed to have been acquired . . . hereunder." The words "so far as may be" show that the provisions of Act II of 1901 only apply so far as may be suitable.

We now examine the cases which have been cited in this appeal. In order of time comes *Dulari v. Mul Chand* (1), where the occupancy tenant died under Act XII of 1881 leaving two daughters, Mst. Shibbo poor and Mst. Dulari rich. Under Hindu law Mst. Shibbo alone succeeded, and on her death Mst. Dulari claimed against the sons of Mst. Shibbo. The court held: "Section 22 of the Tenancy Act purports to provide for the devolution of an occupancy holding, and if the estate of Mst. Shibbo was that of a full occupancy tenant within the meaning of the section, then there is no doubt that the holding would devolve upon her death on her sons. Mst. Dulari, the plaintiff, however contends that Mst. Shibbo had only a daughter's estate, that is, a restricted life estate in the holding which came to an end with her death." With this part of the judgment we are in agreement and we consider that this passage was a sufficient reason for the finding that Mst. Dulari had a right to succeed, as the succession in section 22 did not apply to Mst. Shibbo as she was not a full occupancy tenant. The judgment went on to say: "It seems to us that Mst. Dulari's rights were acquired on the death of her father, that is to say, prior to the passing of the present Tenancy Act, and that

(1) (1910) I.L.R., 32 All., 314.

these rights were merely postponed during the lifetime of Mst. Shibbo. The present Tenancy Act does not purport in any way to take away the rights which had already been acquired." We think that Mst. Dulari did not acquire rights on the death of her father, but she had a mere *spes successionis* or chance of succeeding, such as is mentioned in the Transfer of Property Act, section 6(a), as not transferable. The next case, *Musammatt Sumari v. Jageshar* (1) by a single Judge, was one where the facts were identical with the case before us. An occupancy tenant was succeeded by his widow under Act XII of 1881 and his widow died under Act II of 1901, leaving a daughter who sued for possession as heir of the occupancy tenant. The defence was that under Act II of 1901 the daughter had no right to succeed. The learned Judge did not consider whether the provisions of Act II of 1901 applied to the case. He merely distinguished the ruling in *Dulari v. Mul Chand* (2) on the ground that it had been held there that Mst. Dulari had acquired the right to succeed on the death of her father and that right had merely been postponed during the lifetime of her poor sister. As the daughter in the case before him had not acquired any such right of succession on the death of her father but had a mere *spes successionis* which might have been defeated by the birth of a posthumous son or by adoption, the learned single Judge held that the plaintiff had no right to succeed. The judgment does not deal with the problem of what is the rule of succession in such a case.

In *Nathu v. Gokalia* (3) an occupancy tenant died under Act XII of 1881 and was succeeded by his widow who died under Act II of 1901, and her daughter took possession. The plaintiffs were brothers and nephews of the father, who in the case of two of them alleged that they had been joint in cultivation with him. The Bench held in the alternative that the plaintiffs could

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(1) (1913) 20 Indian Cases, 7.

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

(3) (1915) I.L.R., 37 All., 658.

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not succeed: "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."

*Bisheshar Ahir v. Dukharan Ahir* (1) was also a case where the occupancy tenant died under Act XII of 1881 and he was succeeded by two daughters Mst. Dilasi and Mst. Sumitra. Mst. Dilasi died first and then Mst. Sumitra died. Plaintiffs were the son and grandson of Mst. Dilasi and defendant was the son of Mst. Sumitra. The two lower courts held that the plaintiff who was the son of Mst. Dilasi had a right to half the holding, and the defendant had a right to the other half. Mst. Sumitra died while Act II of 1901 was in force. On page 200 it was held by the Bench: "Section 22 of the Agra Tenancy Act provides that when an occupancy tenant dies his interest shall devolve as therein provided. If we regard Mst. Sumitra as the occupancy tenant within the meaning of section 22 of the Tenancy Act the plaintiff's title fails. It seems to us that we cannot regard Mst. Sumitra as the full occupancy tenant. When she and her sister succeeded they succeeded merely as Hindu ladies. There is nothing in the Agra Tenancy Act which enlarges the estate of a Hindu female in an occupancy holding in possession at the time the Act was passed beyond the ordinary estate of a Hindu female. If the Act has not provided for the devolution of the

interest in an occupancy holding where it was, at the passing of the Act, in the possession of a Hindu female as such, we think that we ought to go to the ordinary Hindu law to ascertain the rights of the parties . . . We think that the decisions of the courts below were correct and ought to be restored." We consider that the law laid down in this ruling should be applied to the present case, and we agree that we should go to the ordinary Hindu law to ascertain the heir and that Act II of 1901 does not provide for the present case.

In *Bhup Singh v. Jai Ram* (1) the law is not clearly laid down. In *Bechu Singh v. Baldeo Singh* (2) an occupancy tenant died under Act XII of 1881 and his widow died under Act II of 1901, and reversioners of the husband sued to eject one Baldeo Singh as her representative. On page 331 the Bench held: "As we have stated above, the succession opened out to the estate of Ram Kirpal when the Rent Act of 1881 was in force. The actual possession of the plaintiffs, if they were then in existence, was merely postponed during the lifetime of the widow; see *Dulari v. Mul Chand* (3)." We do not think that this reasoning is correct, although we agree that the Bench was correct in dismissing the plaintiffs' appeal on the ground that they had not shared in the cultivation of Ram Kirpal.

In *Bhawani Bhikh v. Sidh Narain* (4) a learned single Judge put forward a different view from other rulings and held that where a male tenant died under Act X of 1859 and his widow died under Act II of 1901 "succession would open out on her death to the heirs of the last male holder and would go to the persons entitled under section 22 of the Agra Tenancy Act II of 1901 and then in existence, provided that if those persons are the daughter's sons or collateral male relatives in the male line of descent, they must be co-sharers in the cultivation of the holding at the time when

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(1) (1918) 16 A.L.J., 459.

(3) (1910) I.L.R., 32 All., 314.

(2) (1922) I.L.R., 44 All., 327.

(4) A.J.R., 1923 All., 18.

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the *last* occupant died." By last occupant the court meant the widow.

We consider that the weight of judicial decision is in favour of the view which we have taken, that where an occupancy tenant dies under Act XII of 1881 and is succeeded by his widow who dies under Act II of 1901, the succession is not governed by section 22 of Act II of 1901 but by the personal law of the deceased male occupancy tenant. The plaintiff Mst. Rajna as a daughter of the male occupancy tenant is entitled to hold on the death of the last surviving widow. The learned single Judge has decided in her favour. We dismiss this Letters Patent appeal with costs.

SULAIMAN, C.J.:—Without committing myself to the view that a widow who succeeded to her husband after 1901 is not an occupancy tenant within the meaning of the Tenancy Act II of 1901, I agree that the preponderance of authority is in favour of the view that the succession after her death, occurring before 1926, is not governed by section 22 of Act II of 1901, but by the personal law of her deceased husband. The least objectionable interpretation of section 22 is that it did not apply to such widows at all. I, therefore, concur in the order proposed.

### FULL BENCH

*Before Mr. Justice Niamat-ullah, Mr. Justice Bennet and  
Mr. Justice Rachhpal Singh*

BISHAN SARUP (PLAINTIFF) v. MUSA MAI. AND OTHERS  
(DEFENDANTS)\*

*Court Fees Act (VII of 1870), section 7(iv)(c); schedule II, article 17(iii)—Specific Relief Act (I of 1877), sections 39, 40, 42—Declaration—Consequential relief—Cancellation of instrument—Suit for declaration that plaintiff's title has not been affected by a sale deed executed by another person, it being void and ineffectual as against plaintiff—Cancellation*

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