

**Dal Singh and ors. Vs. Thaman Singh**

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**SooperKanoon Citation :** [sooperkanoon.com/447402](http://sooperkanoon.com/447402)

**Court :** Allahabad

**Decided On :** Jul-04-1914

**Reported in :** (1915)ILR37All7

**Judge :** Henry Richard, C.J. and ;Tudball, J.

**Appellant :** Dal Singh and ors.

**Respondent :** Thaman Singh

**Judgement :**

Henry Richard, C.J. and Tudball, J.

1. This appeal arises out of a suit brought by one Kewal Singh to recover possession of certain immovable property comprising an occupancy holding, The occupancy holding belonged at one time to Puhap Singh. Puhap Singh had a son Hansi and a son Kewal, the plaintiff. On the death of Puhap Singh, Hansi became the occupancy tenant. Kewal had been adopted into another family. On the death of Hansi the defendant Thamman Singh entered into possession. Kewal Singh then brought the present suit alleging that he was entitled under Section 22(c) of the Tenancy Act to the occupancy holding. He also alleged that Thamman Singh was illegitimate.

2. The court of first instance dismissed the suit. The lower appellate court reversed the decision of the court of first instance and decreed the plaintiff's suit. Hence the present appeal.

3. In our opinion the decree of the court of first instance is correct and must be restored. Unless Kewal Singh can be said to be the brother by the same father as Hansi's, he has no right to the occupancy holding, even on the assumption that Thamman Singh is illegitimate. In our opinion once a boy has been adopted into another family he ceases to be a 'lineal descendant' of his natural father. This was expressly held by a Bench of this Court in the case of Lata v. Nahar Singh (1912) I.L.R. 34 All. 658. In principle exactly the same view was taken in the case of Nandan Tiwari v. Raj Kishore Rai Select Decisions 1904 No. 5. We agree with both these authorities.

4. The respondents rely upon the case of Ali Bakhsh v. Barkatullah (1912) I.L.R. 34 All. 419, and quote the following passage from the judgement : 'In Out opinion the personal law of the parties has nothing to do with the rule of succession which is laid down by Section 22 of the Tenancy Act.' In our opinion this remark of the Judges must be read in connection with the particular facts of the case before them.

5. The result is that the appeal is allowed, the decree of the court below set is aside and the decree of the court of first instance is restored with costs in all courts.