

**Bhikham Vs. Natha**

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**Court :** Allahabad

**Decided On :** Mar-19-1951

**Reported in :** AIR1952All188

**Judge :** Kidwai, J.

**Acts :** Uttar Pradesh Tenancy Act, 1939 - Sections 180 and 242

**Appeal No. :** Second Appeal No. 176 of 1948

**Appellant :** Bhikham

**Respondent :** Natha

**Advocate for Def. :** Chhotey Lal, Adv.

**Advocate for Pet/Ap. :** B.K. Dhaon, Adv.

**Disposition :** Appeal allowed

**Judgement :**

**Kidwai, J.**

1. On 26-9-1946, Natha, respondent, claiming to be the hereditary tenant of a plot of land in village Udra Pachhlai, instituted a suit in the Court of the Munsif (Central) Hardoi for recovery of possession of the plot against Bhikham, appellant, who was said to be a trespasser. Bhikham claimed to be a sub-tenant and an issue was

framed to determine this claim and was remitted to the Revenue Court for a finding.

2. While the matter was still before the revenue Court, Section 180, U. P. Tenancy Act, was amended in such a way that suits even by tenants against treapassera became triable by revenue Courts and consequently the jurisdiction of the civil Court became barred under Section 242, Tenancy Act.

3. The Revenue Court, therefore, returned the cage to the civil Court and the defendant applied to the civil Court pointing out the amendment of the law and praying that no further proceedings be taken by the civil Court, The civil Court overruled this plea and held that it had jurisdiction to dispose of the suit which had, at the time of its institution, been rightly instituted in the civil Court according to the Full Bench decision in Ori Lal v. Ganeshi (1947 Oudh W. N. 42).

4. Thereafter the issue was again remitted to the Revenue Court for a finding and the Revenue Court in the absence of the defendant, found that it was not established that the defendant was a sub-tenant. The finding was returned to the Munsif who proceeded to decree the suit with costs.

5. The defendant appealed to the District Judge, Hardoi and raised the plea of want of jurisdiction in the civil Court at the date that the decree was passed. The learned District Judge upheld the decision of the Munsif that the civil Court continued to have jurisdiction to dispose of the suit inspite of the amendment of Section 180, U. P. Tenancy Act. He accordingly dismissed the appeal The defendant has now come up in second appeal. The only question involved is what is the effect of the amendment in the law daring the pendency of the suit.

6. The amendment which has taken place is in the law of procedure. The well understood principle is that an alteration in the law of procedure has immediate effect--vide Craies on the Interpretation of Statutes, p. 332. The reason for this is that 'no one has any vested interest in the course of procedure' and consequently vested rights are not affected by any change in procedure, This matter is fully discussed in Naqi Ahmad v. Shiv Shankar Lal A. I. R. (20) 1933 Oudh 274 in which case the English and Indian decisions on the subject are fully discussed.

This is a Single Judge decision but it was re-affirmed by a Division Bench in *Amir Haider v. Babbu Lal A. I. R. (21) 1934 Oudh 16*.

7. Both the Oudh cases mentioned above related to a change in the procedure relating to the sale of land in execution of decrees. In accordance with the provisions of Civil Procedure Code read with a notification issued by Government under Section 68, Civil P. C. on 7-10-1911, the civil Court which passed the decree had authority to sell all immovable property except ancestral estates. In the exercise of this authority, the civil Court had directed the sale of agricultural land which it had held to be self-acquired and ordered the sale to proceed under its own control. While the proceedings were still pending, no sale having taken place, but after the execution application had been made, the Government issued a fresh notification under Section 68, Civil P. C and cancelled the earlier notification. By this notification it was directed that 'with effect from 1-4-1932, the execution of decree in cases in which a civil Court has ordered any agricultural land situated in the United Provinces of Agra and Oudh or any interest in such land to be sold, shall be transferred to the Collector.

8. Upon the issue of this notification the judgment-debtor prayed for the transfer of execution to the Collector, but the civil Court dismissed the application holding that, since the order for sale had been passed before the issue of the notification, it had power to sell. On appeal the Chief Court rejected this contention and held that, after the issue of the notification the civil Court had no jurisdiction to continue the execution proceedings pending.

9. The present case is exactly similar. By an amendment of the law, the civil Court was deprived of jurisdiction to pass a decree in a suit of the nature of the present suit. In these circumstances it had no option but to return this plaint for presentation to the proper Court, This has been held by me in regard to this very amendment in *Bam Das Murai v. Binda Din, Second Appeal No. 371 of 1948*.

10. The learned District Judge relied upon *United Provinces v. Mt. Atiqa Begam, 1941 Oudh W. N. 297*, for the contrary view. In that case, however, the learned Judges were dealing with a case in which the amendment deprived a party of his right to sue altogether. They held that such a change could not affect pending

suite. That was not a change of procedure but the negation of a vested right to obtain relief which had already been put into motion by the institution of a suit.

11. In *Abdul Haq v. Pateshwari Prasad Singh* : AIR1946 All294 , upon which the learned Advocate for the respondent relied, a Division Bench held that, inspite of a change in the Tenancy law the civil Court still had jurisdiction to dispose of a suit of the nature which it was trying. Obviously, in such a case, no question arose of the return of the plaint to the proper Court because the civil Court was itself the proper Court.

12. It must, therefore, be held that the civil Court had no jurisdiction to proceed, with the trial of this case after the legislature had amended Section 180, U. P. Tenancy Act, in such a way as to confer jurisdiction on the rent Court even in cases instituted by tenants against trespassers. This appeal is allowed, the decrees of both the Courts below are set aside and the case is remanded to the trial Court with the direction that it shall return the plaint to the plaintiff for presentation to the proper Court. The defendant appellant is entitled to his costs of this appeal and of both the Courts below from the plaintiff.

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