

**Muhammad Isa Khan Vs. Muhammad Khan**

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**Court :** Allahabad

**Decided On :** Jul-23-1917

**Reported in :** AIR1918All410; (1915)ILR40All60

**Judge :** Piggott and ;Walsh, JJ.

**Appellant :** Muhammad Isa Khan

**Respondent :** Muhammad Khan

**Judgement :**

**Piggott, J.**

1. This is a second appeal by the plaintiff in a suit for resumption brought under the provisions of chapter X of the Tenancy Act, (Local Act No. II of 1901). The court of first instance found that the whole of the area specified at the foot of the plaint had been held rent-free by the defendant for 50 years, and by two successors to the original grantee. It also found that the land was not liable to resumption at the pleasure of the grantor, or under any of the other conditions laid down by Section 154 of the same Act. The learned Assistant Collector, however, felt himself compelled to draw a distinction between two portions of the area in suit. With regard to plots of land making up a total area of seven bighas, which had never been anything but cultivated or culturable land, the finding was that the provisions of Section 158 of the Tenancy Act clearly applied and that the defendant must be deemed to hold the same in proprietary right. With regard to

the remaining 9 bighas, 16 biswas, it was found that this area had at one time been occupied by a grove. This grove had ceased to exist something more than 12 years, probably about 15 years, prior to the institution of the suit, and during this latter period the land had been under cultivation. The Assistant Collector, however, in accordance with certain decisions of this Court and also with what appears to be the latest pronouncement of the Board of Revenue on the subject), held that land constituting a grove was not land let or held for agricultural purposes within the meaning of the definition in Section 4, Clause 2, of the Tenancy Act, No. II of 1901. From this he went on to conclude that the provisions of Section 158 of the same Act could not apply to this area because it was not shown to have been held for 60 years as 'land' within the meaning of the definition above referred to. He went on to conclude that the plaintiff was entitled to have rent assessed on this area, and he framed his decree accordingly. Both parties appealed to the District Judge. On the main question in issue the learned Judge has agreed with the first court. We must accept the findings of fact arrived at, namely, that the entire area in suit had as a matter of fact been held rent-free for 50 years by the defendant and by at least two successors to the original grantee. We find it also impossible to interfere with the decision of the lower appellate court that the provisions of Section 154 of the Tenancy Act do not apply to any portion of the area in suit. On these findings the appeal of the plaintiff in the court below against that portion of the decree of the Assistant Collector which was adverse to him was necessarily dismissed. The learned Judge then went on to consider the appeal of the defendant. He was evidently of opinion that the area in suit, forming part of a rent-free holding, must necessarily be subject to the provisions of Section 158 of the Tenancy Act. He endeavoured, however, to place his decision in the form of a dilemma against the plaintiff. With regard to the area of 9 bighas, 16 biswas, which the first court had ordered to be assessed to rent, the lower appellate court remarks that this area was either a part of a rent-free grant or it was not. Supposing, says the learned Judge, that it was not, then the only possible conclusion from the facts is that the defendant had been holding it adversely to the plaintiff for a period of more than 12 years prior to the institution of the suit. There was an appeal to this Court which came in the first instance before Mr. Justice Tudball. It may be said at once that it is somewhat difficult to affirm the decision of

the lower appellate court on the precise ground on which it proceeds. The plain fact of the matter is that the land in suit is part of a rent-free grant. The plaintiff himself said so in his plaint and framed his plaint on that assumption. It seems impossible, therefore, to decide the question on the hypothetical assumption of a state of things which is clearly contrary to the pleadings as well as to the ascertained facts. The defendant respondent nevertheless supports the decision of the court below on the broad ground that the whole of the area in suit, and not merely part of it, must be held to fall within the provisions of Section 158 of the Tenancy Act. In this connection the learned Judge of this Court before whom the case first came was asked to reconsider the question of the applicability of the definition of the word 'land' already referred to, In view of the decision of a Bench of this Court in Hadi Hasan Khan v. Pati Ram (1913) I. L. R., 35 All., 200, as to the correctness of which he evidently entertained serious doubts, Mr. Justice Tudball referred this case to a Bench of two Judges. The matter has now been fully argued out before us. There seems to have been a long course of decisions in this Court on the definition of the word land as applied to groves. An elaborate pronouncement on the subject by Mr. Justice Sundar Lal is to be found in Habib-ullah v. Kalyan Das (1914) 12 A. L. J., 1080. In view of the fact that the amendment of the Local Tenancy Act is now under the consideration of the authorities, I am particularly anxious not to reconsider or unsettle, except under pressure of necessity, any principles which seem to have been definitely affirmed by this Court with regard to the provisions of the existing Tenancy Act, nor do I think that it is really necessary in the present case to determine whether an area covered by trees and forming a grove is or is not land let or held for agricultural purposes, or even the narrower question whether in chapter X of the Tenancy Act, or at least in some of the sections falling within that chapter, it should not be held that there is something repugnant in the context to the application of strict definition of the word 'land.' I think that the present case may be quite satisfactorily and most conveniently decided upon its own facts. The appeal now before us is confined to the area of 9 bighas, 16 biswas, which at one time formed a grove. We do not know for certain whether this grove was plante by the original grantee or formed part of the original grant in the sense that the grant when made was one of a grove along with certain cultivated or culturable land. In any case there is no

suggestion in the pleadings, or in the evidence, that there were more than one grant. The area in question in this appeal therefore did form part of a rent-free grant in favour of the predecessors in title of the present defendant. The grove ceased to exist before the present Tenancy Act, No. II of 1901, came into force. Under the previous Act, namely, the Rent Act, No. XII of 1881, there was no express definition of the word land, but the provisions of that Act undoubtedly applied to groves just as much as to cultivated or culturable lands. The area now in suit, therefore, was always land to which the provisions of the Tenancy Act for the time being in force applied. The ruling in *Hadi Hasan Khan v. Pati Ram* (1913) I. L. R., 35 All., 200 cannot possibly be applied to the facts of the present case, because the area in question having been brought into cultivation more than 12 years before the institution of the suit was always 'land' within the strictest meaning of the definition, both at the time when the present Tenancy Act, No. II of 1901, came into force and right down to the date of the institution of the suit. I think, therefore, that it is impossible to distinguish, as the Assistant Collector endeavoured to do, between the two portions of the area in suit. The whole formed a rent-free grant and was subject to the provisions of Chapter X of Act II of 1901, under any possible interpretation of the word 'land,' because the entire area had always been under cultivation while that Act was in force. If, therefore, the conditions laid down by Section 158 of the Tenancy Act are proved to have been satisfied in respect of the entire area in suit, and it is so found by the lower appellate court, there seems no valid reason for drawing a distinction against the area now under appeal merely on the ground that it had at one time formed a grove. On this ground alone I would dismiss this appeal with costs.

**Walsh, J.**

2. I agree. The circumstances of this case are exceptional. I have come to the conclusion that in an admitted tenancy such as this was, the word land in Section 158 must be held capable of including land other than land as defined in Section 4. It would be 'repugnant to the subject,' to quote the language of Section 4, to hold that the word land in this particular case did not include the land on which this grove had stood. The result of doing so would be that, while holding chapter X of the Tenancy Act applicable to the tenancy, we should be driven to hold that it did

not apply to land which formed, the subject of tenancy, and that I think is the very thing which is meant by the somewhat unusual language in the definition clause, namely, 'repugnant to the subject.' I wish carefully to guard myself against being taken to hold anything more. In my opinion it by no means follows that all or any groves held for more than 50 years by two successors to the original grantee come within Section 158, or that, for example, Section 4 can be used by an occupant or grove-holder by adopting the construction which is the right one in this particular case. It is for that reason that I think it necessary to say that I adopt the very closely reasoned judgement of Mr. Reynolds, the Senior Member of the Board, to be found in the Selected Decisions of the Board of Revenue, No. 4 of 1911. I think the view there clearly laid down in a series of propositions is not only correct but entirely consistent with the view which we are taking:-'The custom generally prevailing in these Provinces is that the grove-holder is a tenant paying rent. This was crystallized in the definition of rent and tenant given in Section 4. Groves are in my opinion equally clearly not land as defined in Section 4. If they were land within that definition, there would be no need to differentiate them from land in the definition of rent. If a landholder seeks to get rid of a grove-holder, he cannot take action under chapter X, as that chapter refers to land only. But he may sue to eject under Section 58, as the grove-holder is a non-occupancy tenant.' The Senior Member then goes on to discuss the nature of tenancy and adds:-'Probably in the majority of cases, either by village custom or by special contract, a grove-holder holds not from year to year but so long as the grove exists. In all cases then, when a land-holder seeks to eject a grove-holder, the question of the existence of such custom or contract should almost invariably be made a matter in issue. It follows from what I have said that a grove-holder cannot generally acquire rights of occupancy in the land on which the trees grow.' These statements of the law, which I take to be correct, obviously apply to a vast majority of cases of ordinary tenancy between a grove-holder and a landholder. The case we are dealing with is not one of those ordinary cases. It is a case admittedly of a tenancy wholly independent of and unconnected with a grove as such. It appears to me a mere incident or accident in its history that at one time it became, or a portion of it became, a grove so as not to be land within the strict definition of the term. I think we are both agreed that that accident does not make it any the less tenancy of

land within the meaning of Section 158, and therefore the rights of the parties under that Section have been rightly applied.

By the Court.

3. We dismiss the appeal with costs.

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