

**Ram Sunder and Others Vs. Subedar and Others**

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**SooperKanoon Citation :** [sooperkanoon.com/465224](http://sooperkanoon.com/465224)

**Court :** Allahabad

**Decided On :** Jan-15-1997

**Reported in :** 1998(2)AWC865

**Judge :** G.S.N. Tripathi, J.

**Acts :** [Code of Civil Procedure \(CPC\), 1908](#) - Sections 100; Zamindari Abolition & Land Reforms Act - Sections 9

**Appeal No. :** Second Appeal No. 1063 of 1976

**Appellant :** Ram Sunder and Others

**Respondent :** Subedar and Others

**Advocate for Def. :** Ganga Dhar Dube and; P.K. Misra, Adv.

**Advocate for Pet/Ap. :** S.D. Pathak, Adv.

**Judgement :**

**G.S.N. Tripathi, J.**

1. This appeal arises out of Judgment and decree dated 4.3.76 passed by the District Judge, Basti in Civil Appeal No. 60 of 1975, Ram Sunder and others v. Subedar and others, whereby the first appellate court has dismissed the appeal of the plaintiffs/appellants and confirmed the judgment and decree recorded by the

trial court on 2.11.74.

2. Original Suit No. 133 of 1969 was filed by the present appellants before the trial court for demolition of the constructions raised over the land, shown by the letters ABCD in the site plan in the foot of the plaint and for delivery of possession over the land, in favour of the plaintiffs. In the site plan, in which the disputed land has been shown by letters ABCD, the entire Sehan land of the plaintiffs has been shown by letters PQRS. It has been alleged by the plaintiffs that their house has always been facing towards north and the entire land shown by letters PQRS has been in their possession and they are in its peaceful possession. In the west of their house, there was a house of their collateral Sheo Balak, which fell down about 4 years back and that too came in possession of the plaintiffs. Thus, this land belongs to the plaintiffs. The defendants unlawfully raised their Ghari over the land shown by letters ABCD and have also put a thatch over the same on 9th May, 1968. Repeated efforts to get it demolished failed therefore the suit was filed on 13.5.68 claiming the aforesaid reliefs.

3. The learned trial court after hearing the parties held that the plaintiffs are riot the owners of the land in dispute. They had no right, title or interest in the same. It was also held that there can be no Sehan of the plaintiff after the house of Sheo Balak. There was no question of settlement of the disputed land under Section 9 of the Zamindari Abolition & Land Reforms Act as the land came into possession after Z.A. in the year 1966. Thus, the suit of the plaintiffs was dismissed.

4. The learned trial court framed the following Issues :

1. Whether the land in suit is part of plaintiffs Sehan?

2. Whether the suit is time-barred,

3. To what relief, if any, are the plaintiffs entitled?

4. The learned trial court found issue Nos. 1 and 3 in negative. Issue No. 2 was found in the affirmative. The suit of the plaintiffs was dismissed as aforesaid.

5. Feeling aggrieved, the plaintiff moved the appellate court, being Appeal No. 60 of 1975, which was decided after hearing the parties on merits. The appeal was dismissed. The findings recorded by the learned trial court were confirmed.
6. Feeling aggrieved against the Judgment and order passed by the learned District Judge, Basti, this Second Appeal has been filed.
7. The only question involved in this case is as to whether the plaintiffs or defendants were the owners of the disputed land and were in possession. Both the courts below have given a concurrent findings of fact on this question that the land in suit was not of the plaintiffs and the plaintiffs also failed to prove their possession over the same. These findings are based on the basis of evidence on record. I do not find any ground to interfere with the same under Section 100, C.P.C. as there is no question of law involved in this case.
8. The appeal is dismissed with costs.