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**SooperKanoon Citation :** [sooperkanoon.com/476217](http://sooperkanoon.com/476217)

**Court :** Allahabad

**Decided On :** Apr-16-1914

**Reported in :** 24Ind.Cas.22

**Judge :** Piggott, J.

**Appellant :** Mukhram Singh

**Respondent :** Kota

**Judgement :**

**Piggott, J.**

1. This is an appeal by the plaintiff in a suit for ejectment. The defendant is occupying a house, situated on land which admittedly belongs to the plaintiff, as zemindar of one of the two mahals in the village Amka. The plaintiff's case was that the defendant had entered into occupation of this house by his permission some seven or eight years before the date of suit and that his possession was always that of a licensee under a license liable to revocation at any moment. The suit for ejectment was brought on the allegation that such license had been revoked. The lower Appellate Court has found that the plaintiff has failed to prove the principal allegations of fact on which his claim is based. The judgment of the learned District Judge is not very happily worded and is marred by what seems to me an obvious slip of the pen. He writes, that the defendant has been occupying the house as a (sic) for more than twelve years and not only as a licensee, and

that he cannot be ejected therefrom as long as he is a tenant in the house.' Here the word house ' seems to be a slip of the pen for village', the defendant being admittedly a cultivating tenant in the other mahal into which this village was divided. The learned District Judge has, as a matter of fact, discussed the evidence on both sides and has arrived at, what I think I must treat as, findings of fact over and above those embodied in the words above quoted. It seems to have been common ground that the house in question at one time belonged to an occupancy tenant in the village of the name of Ram Sahai. I take it that the District Judge accepts the defendant's statement that this Ram Sahai died some twenty-five years ago. The defendant claimed to succeed to Ram Sahai's occupancy holding and there was litigation on the point between him and the plaintiff, which resulted in favour of the latter. It would seem, however, that it was in connection with the defendant's claim in respect of the occupancy holding that the defendant occupied the house now in dispute. The District Judge has not recorded a positive finding as to the interval of time he believes to have elapsed between the death of Ram Sahai and the occupation of the house now in suit by the defendant : but he uses expressions intimating his opinion that there can have been no interval of any duration. If so the defendant's occupation of this house must be anterior to the partition which took place in the year 1895. I take it to be quite settled law that, if the defendant as a cultivating tenant in the village possessed a right of residence prior to the partition of 1895, the fact that in this partition his cultivatory holding was assigned to one mahal and his residential house to another would in no way affect his right to reside in the house. On this point I may refer to the cases of *Dharam Singh v. Bhoolar* 2 A.L.J. 588. and *Saddu v. Behari Singh* 30 A. 282 : 5 A.L.J. 237 (F.B.) : 8 M.L.T. 371: A.W.N. (1908) 123. The extreme view as to the rights of the proprietors of a mahal in respect of houses situated in the abadi which was expressed in the case of *Punna v. Nazir Husain* A.W.N. (1902) 60. was doubted in the case of *Saddu v. Behari Singh* 30 A. 282 : 5 A.L.J. 237 (F.B.) : 8 M.L.T. 371 : A.W.N. (1908) 123. above referred to, and can no longer be regarded as a correct exposition of law. -It must be clearly understood that the plaintiff-appellant's rights as owner of the site on which the house in question was situated do not appear to me to have been called in question at all in this suit, and the decision of this case must not be regarded as recognizing the acquisition of any

rights by way of adverse possession on the part of the defendant respondent, either in respect of the site or of the materials of the house. What I understand the lower Appellate Court to have found, is that the defendant has a right of residence in the house in dispute so long as he continues to be a cultivating tenant in the village and is not liable to ejectment from the house at the will and pleasure of the plaintiff. This seems to me to be a correct decision in view of the findings of fact arrived at by the lower Appellate Court and the view which this Court has generally taken regarding the customary law affecting the mutual rights of proprietors and cultivating tenants in respects of houses situated in the village abadi. On these grounds I dismiss this appeal with costs.

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