

**Ganga and ors. Vs. Jai Kumar**

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**SooperKanoon Citation :** [sooperkanoon.com/479349](http://sooperkanoon.com/479349)

**Court :** Allahabad

**Decided On :** Nov-02-1926

**Reported in :** AIR1927All849

**Appellant :** Ganga and ors.

**Respondent :** Jai Kumar

**Judgement :**

**Kendall, J.**

1. This is a second appeal from the order of the learned District Judge of Cawnpore, setting aside the order of the first Court, by which the plaintiffs-appellants were given a decree for the ejectment of the defendant-respondent. The facts that have been proved in the lower Courts are that the plaintiffs-appellants are the occupancy tenants of the holding in dispute and that the defendant-respondent took forcible possession of that holding without the consent of the plaintiffs some time in the year 1328 F., and that the relation of landlord and tenant has never been admitted between the parties by the payment of rent. The first Court held that the defendant must be regarded as a subtenant and, in fact, was recorded as such, and that he was liable to ejectment. The lower appellate Court, however, came to the conclusion that the defendant was not a sub-tenant but a trespasser, and that the plaintiffs should have either taken proceedings under Section 79, N.W.P. Tenancy Act, 1901, or else they should have proceeded

in the criminal Court. The facts appear to be very similar to those in the case reported in *Rani v. Aidal Singh* A.I.R. 1924 All. 431, in which it is held that Section 79 of the Act would not apply, and indeed, I think it is clear from the provisions of the section itself. It was open to the plaintiffs to sue for the ejectment of the trespasser in the civil Court, but under Section 196, N.W.P. Tenancy Act, no such objection can be entertained in this Court. I agree, therefore, with the learned Counsel for the appellants, and allow the appeal with costs. I set aside the order of the lower appellate Court and restore that of the Court of first instance, decreeing the plaintiffs' suit for ejectment.

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