

**Abdul Rahim Vs. Mohammad Salim**

**Abdul Rahim Vs. Mohammad Salim**

**SooperKanoon Citation :** [sooperkanoon.com/481994](http://sooperkanoon.com/481994)

**Court :** Allahabad

**Decided On :** Jun-24-1929

**Reported in :** AIR1929All868; 118Ind.Cas.47

**Appellant :** Abdul Rahim

**Respondent :** Mohammad Salim

**Judgement :**

1. This is a Letters Patent Appeal against a decree of a learned Judge of this Court dismissing the second appeal of the plaintiff-appellant. The plaintiff Abdul Rahim is found by the lower appellate Court to be the son of Nazir Ali and the full brother of Sadiq. Sadiq was the last holder of an occupancy holding and he died about March 1924. After his death that holding was in the possession, as is found by the lower appellate Court, of the two defendants who are the sons of a daughter of Sadiq. In the year 1924 the zemindar filed a suit for ejectment against the defendants, and on 7th July 1925 a compromise was entered into between the zemindar and the defendants by which he acknowledged them as tenants of the occupancy holding at an enhanced rent. The plaintiff brought the present suit on 15th September 1925, that is, within a period of six months from the compromise of 7th July 1925. The plaintiff states that he had no knowledge whatever of that litigation between the zemindar and the defendants or of that compromise. The Court of first instance decreed the suit of the plaintiff for possession of the holding. The lower appellate Court reversed that decree on the ground that the suit should have been brought under Section 79, Tenancy Act, against the zemindar, and that

the civil Court had no jurisdiction. That view has been upheld by the learned Judge of this Court. None of the rulings which have been cited deal with facts which are exactly similar to those which have been found by the lower appellate Court in the present case. In the present case the plaintiff is the heir of Sadiq, the last occupancy tenant, and entitled to succeed under Section 22, Act 2 of 1901, as the brother of Sadiq, But the plaintiff made no attempt whatever to take possession of the occupancy holding subsequent to the death of Sadiq. On the contrary he allowed the defendants to hold the occupancy holding, and he took no action whatever until he brought the present suit on 15th September 1925. In the other rulings which have been shown, either the plaintiff has obtained possession and been dispossessed by the landholder, or the plaintiff has at least obtained entry of his name in revenue records and the Courts have held such entry to amount to constructive possession.

2. The present case differs entirely from these rulings as there is no possession of any kind, constructive or otherwise, by the plaintiff of this holding. We consider that it would be straining the language of Section 79, Act 2 of 1901, if we were to hold that the plaintiff had been ejected otherwise than in accordance with the provisions of that Act by his landholder. We consider that the plaintiff cannot have been ejected by the landholder, because the plaintiff was never in any kind of possession whatever. The claim of the plaintiff was merely to succeed to his brother Sadiq as an heir under Section 22, Act 2 of 1901. No procedure is laid down by that Act for the enforcement of such a claim. But apparently if such a claim were resisted by the landholder, then the claimant may sue under Section 79. Here, however, the plaintiff has not made a claim against the landholder and the landholder has not resisted such a claim. The claim of the plaintiff is against the actual tenant in possession of the holding and such suits against a rival tenant properly lay in the civil Court when Act 2 of 1901 was in force. We note that the procedure under the Tenancy Act 3 of 1926 in this respect has been altered; so the present ruling applies merely to Act 2 of 1901. An argument was advanced that on account of the compromise of 7th July 1925 the landholder had constructively dispossessed the plaintiff. The plaintiff was no party to that suit, and it is not proved that he had knowledge of that suit or of that compromise. We consider therefore that compromise does not afford a ground for holding that the

landholder had wrongly ejected the plaintiff. Accordingly we allow this appeal and restore the judgment of the Court of first instance. As the plaintiff alleged in his plaint that he had been in possession of this holding until within one week of the date of filing his plaint, and as that allegation has been found to be absolutely untrue, we consider that the plaintiff should not receive costs in any Court accordingly the parties will pay their own costs throughout.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**