

Tarif Vs. Asa Ram

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Court : Allahabad

Decided On : Feb-26-1923

Reported in : AIR1923All419; 73Ind.Cas.212

Judge : Gokul Prasad, J.

Appellant : Tarif

Respondent : Asa Ram

Judgement :

Gokul Prasad, J.

1. The only point raised in this appeal is, whether the defendant-appellant has acquired proprietary rights or occupancy rights and is consequently not liable to ejection. The plaintiff sued for ejection of the defendant under Section 58 of the Tenancy Act, read with Section 34 of the same Act. The pleas taken in defence were that the defendant had been in possession for more than twelve years and by such possession he had become either the owner of the plot or an occupancy tenant of the same and could not be ejected therefrom.

2. The two Courts below have concurrently found that the defendant had been in possession for more than 12 years without payment of rent but, acting under Section 34 of the Tenancy Act, they have decreed the ejection of the defendant as a non-occupancy tenant holding that the plaintiff chose to accept him as a

tenant on the date when he brought the suit for ejection. This view is supported by a ruling of the Board of Revenue in *Sat Narain Prasad v. Ram Kumar Sel.* Dec. No. 3 of 1910. The opinion expressed by the Junior Member with which the Senior Member concurred is very clear on the point. He holds that, under Section 34 of the Tenancy Act, a person who has cultivated land without the consent of the landholder becomes a tenant when the landholder chooses to acknowledge him to be so, either by suing for rent or by suing for ejection. It is at the option of the landlord to treat such a person either as a trespasser and sue him in the Civil Courts or as a person liable to pay rent and sue him in the Revenue Courts, but until the landlord has exercised this option such a person cannot be considered to be a tenant. Agreeing with those remarks I hold that the suit has been rightly decreed. I dismiss this appeal with costs.

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