

**Kahnu Vs. Hirda Ram Etc.**

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**Court :** Delhi

**Decided On :** Jul-03-1968

**Reported in :** 5(1969)DLT183

**Judge :** T.V.R. Tatachari, J.

**Acts :** Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953 - Sections 11 and 104; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 151 - Order 22, Rule 4

**Appeal No. :** Miscellaneous Second Appeal No. 10 of 1967

**Appellant :** Kahnu

**Respondent :** Hirda Ram Etc.

**Advocate for Pet/Ap. :** Hem Chand,; Ramesh Chand,; M.V. Sharma and;

**Judgement :**

**T.V.R. Tatachari, J.**

(1) This Second Appeal was filed against the judgment and order of the learned District Judge, Mandi and Chamba Districts, at Mandi, Himachal Pradesh, dated 31st October, 1966, in Civil Miscellaneous Appeal No. 282 of 1965 on his file, whereby he allowed the appeal partly and modified the order of the learned Compensation Officer, Sarkaghat, dated 4th September, 1965.

(2) The appellant herein, Kahnu, filed an application before the Compensation Officer, Sarkaghat, District Mandi, Himachal Pradesh, under Section 11 of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953, for the grant of proprietary rights in respect of Kitat 69 area measuring 108 Bighas and 10 bids was comprised in Khewat Khatauni 18 min/55 min 58 in village Chanauta alleging that he was the cultivating tenant of the aforesaid land and was paying rent for the same to the landlords. The said land was owned by two persons, mst. Maghi and Hari Singh, each having a half share therein. Mst. Maghi died sometime before the filing of the application, and the exact date of her death is not available in the record. On her death her share was inherited by Hirda Ram, the respondent herein and mutation took place in his name. Hirda Ram and Hari Singh were impleaded as respondents in the aforesaid application filed by Kahnu. Hari Singh admitted the claim of the applicant (appellant herein) and remained ex parte. Hirda Ram (respondent herein) opposed the application and pleaded that the applicant was not his tenant, that he never gave his land to him, and that he himself was cultivating his own share.

(3) On the said pleadings, the learned Compensation Officer framed the following issues :-

'(1) Is Kahnu tenant holding this land as a tenant of both Hirda and Hari Singh owners? (2) Is Kahnu tenant a tenant of Hari Singh co-sharer only? (3) Relief.'

(4) On a consideration of the evidence adduced by the parties, the learned Compensation Officer, by his judgment dated 4th September, 1965, held that Kahnu was cultivating the entire land of 108 Bighas and 10 bids for many years as non-occupancy tenant even during the life-time of Maghi, that Hirda inherited the share of Mst. Maghi, that neither Mst. Maghi during her life-time nor Hirda after he has inherited his share had objected to the possession of Kahnu who remained in peaceful possession of the whole land, that the whole land of 108 Bighas and 10 bids was jointly owned by Hirda and Hari Singh as co-sharers, and that Kahnu was the non-occupancy tenant of both Hirda and Hari Singh, and was not the tenant of Hari Singh only. In the result, the learned Compensation Officer accepted the application of Kahnu and conferred proprietary rights over the

entire land as claimed in the application.

(5) Against that judgment and order, Hirda filed an appeal in the Court of the District Judge, Mandi, under Section 104 of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953. Kahnu and Hari Singh were shown as respondents Nos. 1 and 2 respectively. By his judgment dated 31st October, 1966, the learned District Judge held that the share of Mst. Maghi had been mutated in the name of Hirda, that the land was jointly owned by Hirda and Hari Singh, that it was Hari Singh who created the tenancy being in occupation as a share-holder, that Hirda or Mst. Maghi never created any tenancy, that under those circumstances Kahnu could not be held to be tenant of Hirda, that Hari Singh could create the tenancy of only his own share, but not of the co-sharer, and Hirda was not bound by such tenancy, and that the Compensation Officer had wrongly held Kahnu to be the tenant of the whole of the land under both the landlords, and also wrongly granted proprietary rights to Kahnu in respect of the share of Hirda also. In the result, the learned District Judge allowed the appeal and modified the order of the learned Compensation Officer to the extent that Kahnu was entitled to the grant of proprietary rights in the land applied for in respect of only the share of Hari Singh excluding the share of Hirda. The patta was directed to be accordingly amended, and any amount recovered in excess was directed to be refunded to Kahnu. It is against that judgment that the present Second Appeal has been filed by Kahnu.

(6) In the Second Appeal Hirda was the first respondent and Hari Singh was the second respondent. In ground No. 4 in the Memorandum of Second Appeal, it was stated that Hari Singh had died during the pendency of the appeal before the learned District Judge that none of the legal representatives were brought on record, and that the appeal had abated automatically, and so the order of the District Judge was liable to be set aside. The appellant also filed a petition C.M No 252 of 1967 in this Second Appeal on 7th July, 1967, under order 22, Rule 4 of the Code of Civil Procedure read with Section 151, for bringing on record the legal representatives of the deceased Hari Singh. It was stated in the petition that Hari Singh died about ten months back. The first respondent Hirda, filed a counter affidavit and contended that Hari Singh had died more than ninety days after to the

filing of the petition, that the application, was therefore, barred by time and the legal representatives should not, therefore, be impeded, and that in the absence of the legal representatives, the appeal was liable to be dismissed as abated.

(7) Before me, Shri Hem Chand, the learned counsel for the appellant, Kahnu, conceded that the Second Appeal had abated as against the second respondent Hari Singh, that no valid reason was given in the petition for the delay in seeking to bring the legal representatives of the deceased Hari Singh on record, and that the petition is liable to be dismissed on that ground. I accordingly dismiss the petition, C.M.P. No. 252 of 1967.

(8) Shri Romesh Chand, the learned counsel for the first respondent Hirda, stated before me that he does not contend that the entire Second Appeal has abated even as against the first respondent by reason of the abatement of the Second Appeal as against the second respondent Hari Singh, and that he would oppose the Second Appeal on the merits.

(9) The question for determination therefore is as to whether the lower Appellate Court was right in holding that the appellant, Kahnu, was not the tenant of the first respondent Hirda, and Hari Singh could not admit Kahnu as a tenant and bind his co-sharer Hirda with that tenancy. It was stated in the judgment of the learned Compensation Officer that Kahnu was in possession of the entire land i.e. 108 Bighas and 10 Biswas, while in the judgment of the learned District Judge it was stated in one place that Khatauni No. 55, which measures 38 Bighas, 16 Biswas and 11 Biswansis, was under the cultivation of Hari Singh Hisadar, and Khatauni No. 58, which measures 69 Bighas, 18 bids was and 9 Biswansis was also under the cultivation of Hari Singh Hisadar but through Kahnu as non occupancy tenant, and in another place that the whole of the land was under the cultivation of Kahnu, Shri Hem Chand, however conceded before me that Kahnu was in possession of only Khatauni No. 58, which measures 69 Bighas 13 bids was and 9 Biswansis. Even so, both Hirda and Hari Singh have each half share in Khatauni No. 58. Kahnu was let in as tenant by Hari Singh in respect of the said Khatauni. He could do so only in respect of his share in the Khatauni, but not in respect of the half

share of Hirda, unless, of course, Hirda had consented to the same. The learned Compensation Officer observed in his judgment that neither Mst. Maghi during her life-time nor Hirda after he inherited the share of Mst. Maghi had objected to the tenancy of Kahnu, and that, therefore, the tenancy was binding upon Hirda. Shri Hem Chand also urged before me that since Mst. Maghi and Hirda raised no objection to and acquiesced in the possession of Kahnu as a tenant, the tenancy should be regarded as binding on Hirda. I do not think so. Where a land is owned by two co-sharers, one co-sharer cannot induct a tenant into his share as well as the share of the other co-sharer in the land so as to make the tenancy binding upon the other co-sharer, except with the consent of the other co-sharer. The consent may, of course, be either express or implied. Acquiescence by the other co-sharer would no doubt amount to implied. A consent, but the acquiescence has to be established, like any other fact, by clear, definite, and cogent evidence or circumstances. Omission to object on the part of the other co-sharer for a long time and with full knowledge of the occupation of the land including his share by the tenant may be a circumstance from which an inference of acquiescence might be drawn. But, in the present case, the copy of Jamabandi produced in the case was only of the year 1960-61, the khasra-girdawari which shows Kahnu as being in possession of the land mentions that the inspection of the crop by the Patwari was made only on 8th April, 1963. The application under section 11 of the Act was filed on 18th August, 1964. The date on which Mst. Maghi died is not known. In these circumstances, it cannot be said that the omission to object to Kahnu's possession as tenant either on the part of Mst. Maghi or on the part of Hirda, assuming that they knew about the possession of land by Kahnu, was for such a long time as to constitute an acquiescence on their part so as to make the induction of Kahnu as a tenant by Hari Singh binding upon them.

(10) Shri Hem Chand submitted also that when one co-sharer is in possession of the share of another co-sharer, the former holds the land found on behalf of the latter, and if the former inducts a tenant into the entire land, he should be regarded to have done so for and on behalf of the other co-sharer also, and the tenancy would therefore be binding upon the other co-sharer. This submission, in my opinion, is practically the same as the previous contention based on acquiescence. The proposition that a co-sharer who is in possession of the common land

including the share of another co-sharer holds the same for and on behalf of the other co-sharer is no doubt a correct proposition of law. But, it applies only in a contest between the co-sharers inter se. It does not apply in the case of a contest between a third party like a tenant inducted by the co-sharer who is in possession and the other co-sharer, and the third party tenant cannot invoke the said proposition and utilize the same against the other co-sharer with whom he has no privity of contract. As already stated, the tenancy created by one co-sharer in respect of the common land would be binding on the other co-sharer only when the latter consents to the same or acquiesces in the same.

(11) For the above reasons, I hold that the learned District Judge was right in his conclusion that Hari Singh could create a tenancy of only his share but not of Hirda, and that Kahnu was not the tenant of the whole of the land including the share of Hirda. The Second Appeal therefore fails, and is dismissed with costs.

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