

**Ambika Prasad and anr. Vs. Jag Prasad Singh and ors.**

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**Court :** Allahabad

**Decided On :** Nov-21-1916

**Reported in :** AIR1916All295; 36Ind.Cas.958

**Judge :** Henry Richards, C.J. and; P.C. Banerji, J.

**Appellant :** Ambika Prasad and anr.

**Respondent :** Jag Prasad Singh and ors.

**Judgement :**

1. This appeal arises out of a suit for ejectment. It is common case that the plaintiffs were rent-free grantees of the land in dispute. The defendants are the zemindars. Some years ago the defendants brought a suit in the Revenue Court under Section 154 of the Tenancy Act, asking for the resumption of the land held by the plaintiffs in this suit under the rent-free grant. This suit failed and was dismissed. It does not appear that the question whether or not the grant was resumable was gone into. It was held that the plaintiffs had not served the preliminary notices and complied with the provisions of the Act. The next thing that happened was that the plaintiffs in the present suit brought suits for ejectment and suits for rent against the persons whom the defendants in this suit had put into possession of the land in dispute. Then the defendants made an application to correct the jamabandi and have the names of the plaintiffs in this suit expunged from the list of muafi-holders. Here again they were unsuccessful, It has been admitted here that the case must be dealt with on the basis of the defendants having forcibly taken possession of the land in dispute, The question is, whether under these circumstances the plaintiffs are entitled to succeed. Both the first Court and the lower Appellate Court decided in favour of the plaintiffs. A learned Judge of this Court held otherwise. It seems to us that the decree of the lower Courts was correct. Until the grant was determined in a legal manner the plaintiffs are entitled to possession. The Tenancy Act prescribes the machinery which the defendants can set in motion if they are entitled to resume the land: but until they do so, the plaintiffs' title to possession is clear. We do not think that it is open to the defendants in a suit like the present brought by the plaintiffs to show that they were entitled to resume the grant.

2. We wish to state here that we do not decide, and we do not think that the Courts below decided, whether or not the defendants are entitled to resume the land, nor do we think that this present suit ought to prevent the defendants taking action under the provisions of the Tenancy Act, if so advised. On the other hand we are quite satisfied that they were not entitled forcibly to take possession of the land which by their own admission the plaintiffs were in possession of, at least at the time they instituted their first suit in the Revenue Court.

3. It would be difficult to say who was in 'possession' at any particular time since. We allow the appeal, set aside the decree of the learned Judge of this Court and restore the decree of the Courts below with costs of both hearings in this Court.

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