
(1935) 09 AHC CK 0029
In the Allahabad High Court

Ahmad Nazar Beg and Others

APPELLANT

Vs

Babu Brij Nandan Prasad

RESPONDENT

Date of Decision : 10-09-1935

Acts Referred:

Transfer of Property Act, 1882 — Section 108(p)

Citation : AIR 1935 All 1040 : 159 Ind. Cas. 680

Hon'ble Judges : Bennet, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Bennet, J.—This is a Letters Patent appeal by the defendants against the judgment and decree of a learned Single Judge of this Court. The facts are somewhat peculiar. The plaintiff brought a suit for demolition of certain constructions on plot No. 5 in the Civil Lines of Moradiabad town. The plaint set out in para. 1 that the plaintiff was the owner in possession of resumed milak land, and it was claimed that four plots including plot No. 5 comprised an agricultural tenancy for which the defendants paid a rent of Rs. 35 per annum. The two lower Courts dismissed the suit of the plaintiff and the lower appellate Court found that this plot No. 5 was originally part of an agricultural holding which the defendants' predecessor held from the predecessor of the plaintiff, that the bungalow in question had been built many years ago by a person called Mr. John with the consent not of the landlord but of the defendants' predecessor who was a tenant, that subsequently the bungalow had been acquired by the tenant and that more recently in a suit in May 1912 for enhancement of rent brought by the plaintiff against the defendants it was held by the Revenue Court that the relation of landlord and tenant did not exist between the parties as regards plots Nos. 5 and 9 and these were held to be abadi lands. The Court then proceeded to find that:

The building of the kothi changed the nature of the tenancy of plot No. 5 from that of an occupancy holding to that of a holding for building purposes. The

entire compound of the bungalow which stands on plot No. 5 is used as an appurtenant to the dwelling house.

2. There is therefore a finding that plot No. 5 is appurtenant to the dwelling house which stands on it. The Court therefore found that as long as the plot was used for purposes of a dwelling house the defendants were not liable to ejectment, and the suit was dismissed. The learned Single Judge of this Court agreed with those findings to the extent that he held that the plot had lost its agricultural character. But he held that Section 108(p), T.P. Act, applied and that therefore the buildings should not be made on the plot. We do not agree that this section would apply because this section applies to lessees in general, and if the plot has become a tenancy for building purposes the section in question will not apply to it. We note that the definition of land in Act 3 of 1926, Section 3(2) states that:

Land does not include land for the time being occupied by dwelling houses or manufactories appurtenant thereto.

3. Clearly therefore the lower Court was correct in holding that this plot No. 5 is not agricultural land. We see no reason to consider that there is anything wrong in the finding of the lower appellate Court that the entire plot No. 5 is used as appurtenant to a dwelling house and that the plot has become a holding for building purposes. On remand it has been found that the bungalow was built about the year 1875. For many years therefore this plot No. 5 has been a plot on which a bungalow has stood, and the lower Court therefore had evidence on which it could arrive at the finding that the plot, although originally agricultural, had become a plot which was held for building purposes. We do not consider that this is a case of license, because the defendant has all along been in possession of the land as a lessee. The defendant therefore is entitled in our opinion to build on that plot. The lower Courts were therefore correct in dismissing the suit. We see no reason to differ and accordingly we allow this Letters Patent appeal and dismiss the suit of the plaintiff with costs throughout.