
(1928) 11 AHC CK 0018
In the Allahabad High Court

Bansi Kurmi and Others

APPELLANT

Vs

Sukh Mangal Pande and Others

RESPONDENT

Date of Decision : 30-11-1928

Acts Referred:

Citation : (1928) 11 AHC CK 0018

Hon'ble Judges : Dalal, J

Bench : Single Bench

Judgement

Dalal, J.—The plaintiffs zamindar sued for the demolition of a certain construction made by the defendant-tenants on a plot of land in front of their house. This plot of land No. 149, is a court-yard (sahan) of the defendants. The defence was that an old cattle-shed existed on the land, and that the present construction was made in place of the old construction. The old construction, it was alleged, was a cattle-shed. The lower appellate Court held as a finding of fact that no old construction existed there, that the land was used by the defendant-tenants as their sahan (court-yard), and that the present construction in dispute was entirely a new building constructed on an open plot of land. The claim was for demolition of the building, and, rightly, not for the possession of the land on which the construction is made. The zamindar is prepared to permit the defendants to use the land as heretofore as their court-yard.

2. It was argued that granting that the piece of land was the court-yard of the defendants and appurtenant to their house, they were entitled to build thereon. A Single Judge unreported ruling of this Court in Second Appeal No. 1090 of 1924 in a case decided on 3rd February 1927 was quoted. The learned Judge delivered this dictum that a tenant may build either a house or well inside his house or on land actually appurtenant to and adjoining his house which forms part of the site on a portion of which his house stands, provided, at any rate, that such construction is not detrimental to other interests of the zemindar. The lower appellate Court has not gone beyond this dictum, Being an Indian himself he has put finger on the real difficulty of the zemindar. It is impossible for an Indian

tenant to live in a house without a court-yard, to sit out and sleep out in the open, and the lower appellate Court has rightly pointed out that after the tenants build on this present sahan of theirs they will require another plot of open land in front to use as a fresh sahan. The use of the sahan, therefore as a building site, is certainly detrimental to the interests of the zamindar. A distinction has always been drawn by this Court between the construction of a well which is necessary for agricultural purposes and the construction of a building. There is a large number of reported rulings to prevent a tenant from building on his sahan. There are two of 1913, Kehri Singh v. Hulasi [1914] 12 A.L.J. 175 and Bhagwan Das v. Muhamad Yahia [1913] 35 All. 292, one of 1914, Chhaterpal v. Gajadhar Upadhyaya [1914] 25 I.C, 59, and one of 1924, Ganesh Singh Vs. Jai Mangal Singh and Another, The lower appellate Court was fully justified, according to the opinion long held by this Court, that the zamindar was entitled to have the construction removed from the open court-yard.

3. It was next argued that questions as to limitation and acquiescence had not been decided. No question of limitation arose as the lower appellate Court distinctly held that the building in dispute was an altogether new building. There can be no acquiescence, in a matter of this nature where a kachcha house is put up in a short time costing little to put up or to pull down.

4. I dismiss this appeal with costs.