

(1957) 11 AHC CK 0023
In the Allahabad High Court
Case No : S.A. No. 1949 of 1950

Ch. Pirthi Singh and others	Vs	APPELLANT
Ch. Gurdial and others		RESPONDENT

Date of Decision : 01-11-1957

Acts Referred:

Citation : (1958) 28 AWR 463

Hon'ble Judges : Gurtu, J

Bench : Single Bench

Advocate : Sri H.C. Sharma, for the Appellant; Sri K.C. Agarwala and Sri A. Banerji, for the Respondent

Final Decision : Partly Allowed

Judgement

Gurtu, J.—This was a suit for declaration that the Plaintiffs were the joint owners of the plot in suit and for joint possession thereof with the Defendants. It appears that the plot in a suit was formerly a grove and that the trees standing over a portion of the grove had been cut and removed and in 1333F the Defendants had solely started cultivating that portion. Thereafter it appears that the other trees were also cut and then the Defendants in 1353F brought the rest of the plot into their sole cultivation. It has been referred to in the judgment of the trial court as the northern portion.

2. The Plaintiffs being completely excluded from the joint land filed this suit. The Defendants pleaded that the Plaintiffs were not entitled to joint possession and their remedy was to obtain a partition.

3. The trial court declared that the Plaintiffs were cosharers in the suit along with the Defendants. This is the only relief that the trial court gave.

4. An appeal to the court below was dismissed.

5. This is an appeal by the Plaintiffs. It was submitted that inasmuch as it had been declared that the Plaintiffs were the joint owners of the plot they were

entitled to joint possession.

6. Under the rulings of this Court if there has been exclusively cultivation by cosharers under an arrangement then that arrangement is not disturbed and the Plaintiffs are required if they do not want the arrangement to continue to file a suit for partition. In this case inasmuch as possession over a part of the plot has been with the Defendants since 1333F exclusively an arrangement that they should hold that part exclusively may be implied. So far as the rest of the plot is concerned which has subsequently been also taken into the sole possession by the Defendants no arrangement that the plot would be held exclusively by the Defendants can be implied in this case. This suit has been brought within two years of the bringing of this part of the plot under sole cultivation.

7. In a case where parties to the suit are cosharers in a large Mohal the bringing into cultivation solely of banjar land which is not in use by anybody, may confer a right of sole occupation of that land until a partition suit is brought; see Bhagwan Sahai v. Ch. Mukand Lal 1949 AWR (HC) 171 but in my view such a right cannot be accorded in a case where the result of according that right would be that the Plaintiffs would be entirely excluded from all the joint land.

8. In the present case the Defendants were already in sole occupation of a part of the plot and now they are in sole occupation of the whole. The part which they have subsequently occupied must in my view, be put into the joint possession of both the Plaintiffs and the Defendants. In my view this is not only equitable but is also in accord with the legal right of the parties. The limitation placed by this Court on the rights of joint holders of land should not be extended to this extent that one of the joint holders would be completely excluded from enjoyment of any part of the joint holding.

9. This appeal is therefore, partly allowed and the decree of the courts below is modified to this extent that the Plaintiffs will in addition be put in joint possession of that part of the plot which they had brought into cultivation in 1353F. If necessary when this decree is executed the execution court will determine and demarcate the area after such enquires as it thinks necessary.

10. In the circumstances parties will bear their own costs of this appeal.