

(1929) 03 AHC CK 0010
In the Allahabad High Court

Chhotey Lal

APPELLANT

Vs

Manzur Ahmad and Another

RESPONDENT

Date of Decision : 16-03-1929

Acts Referred:

Citation : AIR 1929 All 439

Hon'ble Judges : Ashworth, J

Bench : Division Bench

Judgement

Ashworth, J.—This second appeal arises out of a suit brought by the plaintiff-respondent as zamindar against the defendant-appellant as a tenant for possession of a certain site in the town of Moudeha on the ground that the appellant who had originally been allowed occupation of the site for his house as an agriculturists had abandoned the house and the site.

2. Bath the lower Courts have decreed the suit. In this appeal four pleas are raised. The first plea is that inasmuch as the appellant still has a holding in the village he could not be held to abandon the house site. The lower Courts have found that he has gone to live in another village, that he has not kept up the house which is in ruins and that he has sold the site under the ruins to another person. On these facts they have found abandonment. It is clear that, under the custom regulating the right of tenants in their houses in the abadi, abandonment of the site or the house is sufficient to cause the site to revert to the zamindar. It is not necessary to prove that the tenant has given up all connexion with the village. The principle is that the site which is given for residence can be resumed by the zamindar when no longer used for the purpose for which it was granted.

3. The second plea is that the plaintiff being only a cosharer to a small extent in the village could not sue the appellant alone. It is true that Order 1, Rule 8, Civil P.C., provides for the institution by one cosharer of a representative suit on behalf of all but under Order 1, Rule 9, no suit shall be defeated by reason of non-joinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually

before it. In the present case the plaintiff is entitled to all the enjoyment in the abandoned site that is open to the proprietary body. Retention of the site by the defendant would defeat the right of the plaintiff. It appears to me that the Courts were justified in giving a decree to the plaintiff alone. It is to be remarked that the other cosharers could not have, in opposition to the plaintiff, permitted the defendant assignee to take possession of the site. A third plea is that, inasmuch as the plaintiff called Maudeha a qasba or town, the suit would not lie. The use of the word "qasba" is not inconsistent with the village or town being of the character of an agricultural village. Nor was there any plea in defence to this effect. The plaintiff clearly alleged that the defendant had received a grant of this site from him as zamindar and in the capacity of an agricultural tenant. There was no contention of the defendant that he received the site otherwise than as an agriculturist. Indeed this was the basis of the defence plea that by maintaining his holding he maintained occupation of the site of the house. Lastly it is urged that no issue having been framed as regards the custom the lower Courts could not invoke it. It has been repeatedly held by the High Court that the custom whereby agricultural tenants occupy sites of the abadi on certain conditions is so prevalent and so well-known that it will be presumed to exist in the absence of evidence to the contrary. So there is no force in this plea, The appeal fails and is dismissed with costs.