

(1983) 07 AHC CK 0023
In the Allahabad High Court
Case No : Second Appeal No. 1778 of 1972

Damari Singh

APPELLANT

Vs

Ragkuvans Upadhyaya (deceased), Through Girja Shanker
and Others

RESPONDENT

Date of Decision : 14-07-1983

Acts Referred:

Evidence Act, 1872 — Section 3

Citation : (1983) 07 AHC CK 0023

Hon'ble Judges : B.D.Agarwal, J

Final Decision : Dismissed

Judgement

1. This second appeal is preferred by the plaintiff.
2. The dispute relates to a piece of land comprised of plot No. 519. The contention for the plaintiff is that this is part of village Rasta and the relief sought is for injunction directing the defendants to abstain from interfering with the use of the said land as village Rasta. A sum of Rs. 25 was also claimed as damages. The suit was dismissed by the trial court. The appeal filed by the plaintiff against the dismissal of the suit was also dismissed on 22nd January, 1972.
3. Learned counsel for the plaintiffappellant contended, inthe first place, that there was, earlier, a suit with respect to the land comprised in plot No. 520. The suit was instituted by Damari Singh, the plaintiffappellant, and one of the defendants therein was Kalpnath. The defendant No. 1 in the suit giving rise to this appeal is the son of Kalpnath. In the boundary specified in the plaint of the earlier suit the plaintiff Damari Singh, it appears, had indicated plot No. 519 as village Rasta. Subsequent to the said suit being decreed, there was a Dakhalnama executed in the course of the execution proceedings in favour of the plaintiff. In the Dakhalnama as well as plaint map and in the judgment passed in civil appeal No. 105 of 1957, the boundaries were specified. The contention is that since the defendant No. 1's father was a party in that suit this should

operate as an important piece of evidence against the defendant. Criticism has been made with regard to the observations of the lower appellate court to the effect that the defendant No. 1 was not a party to that earlier proceedings. It may not be overlooked that the father of the defendant No. 1 was a party to the suit and that the defendant No. 1 claims title through his deceased father. The fact remains, however, that the earlier suit was with respect to the different piece of land, namely, the land comprised in plot No. 520. In view of this, the defendant in that suit cannot be said to have any concern directly or even indirectly with the land comprised of plot No. 519. It does not, therefore, appear that this may be said to constitute an important piece of evidence against the defendant No. 1. The other contention of the learned counsel for the appellant is that since the dispute raised is with respect to an alleged village Rasta, it was not necessary that the suit be filed in the representative capacity, or that it be brought by the Gaon Sabha. There can be no controversy with regard to this condition of law, and the lower appellate court may be said to have erred in observing to the contrary. It is also worthy of note that the lower appellate court has gone into the merits of the question whether the village Rasta does exist in relation to the said land. Assuming, therefore, as contended for the plaintiff-appellant that the suit is maintainable, the chief question remains whether the land is comprised of village Rasta as asserted by him.

4. In relation to the chief question the lower appellate court would seem to have relied upon the village partition map. It does not seem to me that the courts below have erred in placing reliance upon the said village partition map. The other evidence has also been taken into consideration and upon consideration of the same it has been found that this land cannot be said to have been in use as the Rasta by the members of the village in general. The Khasra extract accompanied the said partition map has also been pointed in this behalf.

5. Consideration being had to the above, the appeal cannot be said to have possessed merit and is, accordingly, dismissed. No order as to costs.

(Appeal dismissed)