
(1912) 06 AHC CK 0041
In the Allahabad High Court

Fakir Chand

APPELLANT

Vs

Kewal Ram and Another

RESPONDENT

Date of Decision : 14-06-1912

Acts Referred:

Transfer of Property Act, 1882 — Section 51

Citation : 16 Ind. Cas. 633

Hon'ble Judges : Chamier, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Chamier, J.—The facts found are that Manga, who was owner of a house in a village, died leaving a widow who held possession for some years. On the death of the widow, the plaintiffs became entitled to the house as zemindars of the village, Manga having left no heirs besides his widow. The defendant-appellant took a sale-deed of the house, including the site, from two persons who admittedly had no title. Having got into possession, he pulled down the old house and built a new one in its place. The Courts below have given the plaintiffs a decree for possession of the land and house. The only question for decision in this appeal is whether the defendant-appellant should be allowed to remove the materials of the house.

2. Neither in his written statement nor in his grounds of appeal to the lower Appellate Court did the defendant-appellant claim to be entitled to remove the materials of the house, but the point seems to have been taken at the hearing in the lower Appellate Court.

3. The case is, of course, clearly distinguishable from, cases in which a person buys-a house in a village from a man who has no" power to transfer it, but who is the owner of the materials? In such cases a decree for possession is given against the transferee, but he is given an opportunity of removing the materials. Nor, on the facts found, is the case covered by Section 51 of the Transfer of

Property Act.

4. According to the English law, the defendant, in such a case as this, would not be entitled to remove the materials or claim compensation therefor. There is a long course of decisions in India, according to which a person, who builds on land which he knows to belong to another, may be allowed to remove the materials before a decree for his ejectment is carried out see, for instance, *Narayan v. Bholagir* 6 B.H.C.R.A.C.J. 80 and *Premji Jivan v. Haji Cassum* 20 B. 298 but those were cases in which the defendant had built upon land upon which there was no building at the time. In the present case, there were buildings on the land which belonged to the plaintiff at the time when the defendant-appellant took possession. The defendant-appellant has not proved that he got rid of all the old materials and built a new house with entirely new materials. All that is shown is that he built a new house using presumably any of the materials of the old house which were serviceable. He spent, no doubt, a considerable sum on new materials and labour, but, in the circumstances, the buildings now on the land must be regarded as the old buildings with improvements and additions. The old and the new materials cannot be separated. I must decline to extend the decisions referred to above to cases in which a person spends money on improving buildings which he knows to belong to another person. The appeal is dismissed with costs.