
(1886) 12 AHC CK 0014
In the Allahabad High Court

Imam Ali Shah

APPELLANT

Vs

Khuda Bakhsh and Others

RESPONDENT

Date of Decision : 22-12-1886

Acts Referred:

Citation : (1887) ILR (All) 339

Hon'ble Judges : Straight, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Straight, J.—This was a suit brought by the plaintiff-respondent, to have his title declared to certain land, and to have demolished certain erections which he alleged the defendants had placed thereon. A body of oral and documentary evidence was recorded by the Munsif, and, in respect of oral evidence, four witnesses were examined on behalf of the defendants. Upon the 18th May 1885, the Munsif recorded in a rubkar that it was unnecessary that any other witnesses should be examined on the part of the defendants, and therefore a large number of witnesses who had been summoned by the defendants were not called or examined in the Munsif's Court. He dismissed the plaintiff's claim, and the plaintiff appealed to the Subordinate Judge. The Subordinate Judge, after an examination of all the oral and documentary evidence upon the record, came to the conclusion that the plaintiff had established his claim, and therefore, decreeing his appeal, reversed the Munsif's decision and decreed the plaintiff's claim. In the course of his judgment the learned Subordinate Judge refers to the evidence of the witnesses called for the defendants, and apparently disbelieves their statements for reasons stated in his judgment, viz., that they appear all to be the creatures of the defendants, who are the zamindars of the mauza. Whether the learned Subordinate Judge's attention was called to the fact that the Munsif had made a rubkar on the 18th May 1885, does not appear from the record. But it seems to me that before reversing the decision of the Munsif, and discrediting the evidence on the record presented by the defendants, the

Subordinate Judge should have taken pains to afford the defendants an opportunity to supplement the evidence which they had given in the first Court by the testimony of those witnesses whom the Munsif had declared it unnecessary to hear. I think the case must be regarded, and should have been so regarded by the learned Subordinate Judge, as one in which the first Court had refused to examine the witnesses tendered by the party. I think the first plea taken in appeal and, in fact, the only plea which was urged by the learned Counsel for the appellants has force, and" should be allowed to prevail. What I am now going to do, and what the Subordinate Judge should have done before, is to direct the Munsif to examine the defendants' witnesses, and when he has done so, return their depositions to the Court of the Subordinate Judge, who will then replace the appeal on his file of pending appeals, and dispose of it according to law, and with regard to all the evidence appearing on the record. The costs incurred will be costs in the cause.