

(1935) 02 AHC CK 0063
In the Allahabad High Court

Jagai Kurmi and Others

APPELLANT

Vs

Harakh Raj Singh and Others

RESPONDENT

Date of Decision : 01-02-1935

Acts Referred:

Citation : (1935) 02 AHC CK 0063

Final Decision : Dismissed

Judgement

Ganga Nath, J.—This is a defendant's appeal and arises out of a suit brought against them by the plaintiff for possession over a mahua tree and to recover Rs. 10 as damages for fruits and branches of the tree alleged to have been wrongfully appropriated by the defendants. The plaintiff's case was that he was the zamindar and the tree in suit had been planted by him and he had been appropriating its fruits. The defendants contend that the tree was in their occupancy holding and that they and their predecessors-in-title had all along been appropriating its fruits. The trial Court found that the tree belonged to the plaintiff and gave a decree for possession but dismissed the suit for damages holding that the defendants were entitled to appropriate the fruits. In appeal the learned Additional Subordinate Judge found in favour of the plaintiff and held that the plaintiff had a right to appropriate the fruits and decreed the suit in full as the tree had been planted by the plaintiff.

2. As already stated, it is apparent from the findings of the Courts below that the tree was planted by the plaintiff himself before his land was let out to the defendants. It is a settled law that the timber of the trees standing on the holdings of tenants whether occupancy or ex-proprietary tenants belongs to the zamindar. In *Nazir Khan and Others Vs. Faiz Mohammad Khan and Another*, it was held that the timber of a tree belongs to the zamindar when the tree is growing on a tenant's land and that it makes no difference if the tenant happens to be an ex-proprietary tenant who himself has planted the tree. In *Khan Chand v. Chandan* 24 Ind. Cas. 81 24 Ind. Case 81. It was observed by Justice Piggott :

I take it to be established by a number of rulings of this Court , of which the

cases of *Lachman Das v. Mohan Singh* 14 Ind. Cas. 582: 9 A.L.J. 672 and of *Ganga Dei v. Badam* 30 A. 131 : 5 A.L.J. 99 : A.W.N. 1908, may be taken as specimens, that the trees planted by tenants on their holdings will be the property of the zamindar and the tenants will have no transferable rights therein. This will be presumed in the absence of evidence to the contrary.

3. The defendants, therefore, had no right to appropriate the timber of the branched as the timber belonged to the plaintiff. The defendants are liable for damages for the branches of the tree appropriated by them. The plaintiff is, therefore, entitled to a decree for Rs. 6 for the price of the branches appropriated by the defendants.

4. As regards the fruits, it is also an equally settled law that a tenant has a right to appropriate the fruits of the trees growing in his holding whether they were planted by him or not. In *Kampta Prasad Vs. Sheo Prasad and Ram Charan and Others*, it was held that in the absence of a custom or contract to the contrary, an occupancy tenant has a right as against his zamindar to the fruit of trees standing upon his holding, though the trees themselves may be the property of the zamindar. The same view was taken in *Imdad Khatun v. Bhagirath* 10 A. 159; A.W.N. 1888, 32 and *Ganga Dei v. Badam* 30 A. 131 : 5 A.L.J. 99; A.W.N. 1908, In the latter case it was laid down:

The presumption of law, and the general rule in the absence of custom, is that the property in timber on a tenant's holding vests in the zamindar, and that the tenant has no right to cut and remove such timber. But it appears to us to be clear that in the absence of a custom or a contract to the contrary, a zamindar has no right to interfere with the enjoyment by his tenant of the trees upon his holding as long as the relation of landlord and tenant subsists.

5. When a land is let out to a tenant by a zamindar it is to be presumed that it is let out with the trees. If there was any contract to the contrary reserving the right to appropriate the fruits of the trees standing on the land for the zamindar, it is for the zamindar to set up and prove that contract. No such contract was set up in this case by the plaintiff nor any has been proved. Consequently in the absence of any contract to the contrary the defendants on whose land the tree is standing have a right to appropriate its fruits. The plaintiff is, therefore, not entitled to a decree for possession or for damages for the fruits. It is, therefore, ordered that the appeal be partly allowed. The decree of the lower Court be modified inasmuch, as the plaintiff's suit for Rs. 6 for the branches appropriated by the defendants shall be decreed and the rest of the case shall be dismissed. The parties shall get and pay costs in all Courts in proportion to their success and failure.