

(1926) 10 AHC CK 0006
In the Allahabad High Court

Jagdish Prasad Narain Sahi

APPELLANT

Vs

Jang Bahadur Naik and Others

RESPONDENT

Date of Decision : 21-10-1926

Acts Referred:

Citation : AIR 1927 All 148

Hon'ble Judges : Iqbal Ahmad, J

Bench : Division Bench

Judgement

Iqbal Ahmad, J.—This is a defendant's appeal and arises out of a suit for a declaration that the plaintiffs are the owners of the land in dispute and that by pure mistake that land has been recorded in the revenue papers in the name of the defendant. The defence was a denial of the plaintiffs' title to the land in dispute and further that the suit was barred by the six years rule of limitation. Both the Courts below have decreed the plaintiffs' suit. From a perusal of the judgment of the learned Munsif it appears that he has not dealt with the question of limitation that formed the subject-matter of Issue No. 2. Probably the question was not discussed before the learned Munsif. But the point appears to have been raised before the learned Subordinate Judge and the learned Subordinate Judge has overruled the plea of limitation and affirmed the decree of the trial Court.

2. The lower appellate Court has found as a fact that the title to the land in dispute is with the plaintiffs. This is a finding of fact and cannot be challenged in second appeal. The main point urged before me is that the lower appellate Court was wrong in holding that the suit was not barred by the six years rule of limitation. It was argued that the wrong entry having been made in or about 1885 and that wrong entry having continued up to the present day, the plaintiffs' right for a declaratory relief is barred. In support of this view reliance is placed on the case of Akbar Khan v. Turaban [1909] 31 All. 9.

3. In my opinion there is no force in the argument advanced on behalf of the appellant. It appears that once in 1897 the plaintiffs sued the defendants in respect of this very plot and the grievance of the plaintiffs in that suit was that

the land in dispute had by mistake been recorded in the kurra of the defendants and that suit ended in a compromise by which the plaintiffs' title to the land in dispute was recognized, and eventually formal delivery of possession was made to the plaintiffs on 1st May 1897. Notwithstanding that compromise the wrong entry in the revenue papers continued. On the strength, of that wrong entry the defendant recently, and certainly within six years of the institution of the suit, sued the tenants in possession of the land in dispute for rent. This action of the defendant, in my opinion, constituted a fresh invasion of the plaintiffs' right and did give them a fresh cause of action. This was the view taken "in the case of *Ilahi Bakhsh v. Harnam, Singh* [1898] A.W.N. 215 which is noted in *Sridhar Rao v. Ram Lal* [1909] 31 All. 7 at p. 10. In my opinion the decision of the lower appellate Court is perfectly correct and I dismiss this appeal under Order 41, Rule 11.