
(1943) 05 AHC CK 0002
In the Allahabad High Court

Jhunni Lal and Others

APPELLANT

Vs

Ghasi and Others

RESPONDENT

Date of Decision : 03-05-1943

Acts Referred:

Citation : AIR 1943 All 302 : (1943) 13 AWR 140

Hon'ble Judges : Plowden, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Plowden, J.—This is a plaintiffs' appeal from the judgment of the Additional Civil Judge, Bulandshahr, dated 29th March 1941. The plaintiffs brought a suit for possession of plot No. 907/1 by removal of the defendants' hut, fodder stack, cowdung stack, cattle troughs and for filling up and levelling a pit dug by the defendants. The suit was decreed by the Munsif. On appeal the suit was dismissed. In plot No. 907/2 is noted abadi and in plot No. 907/1 we are dealing with the difficult question how far rights can be obtained by tenants against zamindars through adverse possession. The law on this subject is still very obscure but it seems to me impossible for tenants to obtain rights by adverse possession in the village abadi under any circumstances. In my opinion, it is an empty gesture for tenants to attempt to obtain a right of ownership by some overt act because this act is directed against the State of which the zamindar is a landholder entered in the revenue papers.

2. In the present case, however, and in the vast majority of cases which I have seen, an attempt is made by the tenants to prove their title by adverse possession by mere lapse of time and by omission on the part of the zamindar to sustain his title. In my opinion a title by adverse possession cannot be obtained by a tenant by these means. The situation in a village is entirely different from that in a town where a zamindar does not pay revenue. In a town either the title to the land is lost or the owner by his negligence does not claim the property or realise rent within 12 years. In a village the title cannot be lost because it is

entered in the patwari's papers and it is unnecessary for the zamindar to claim the property because it is his duty to provide accommodation for his tenants in the abadi rent-free. This accommodation extends not only to the tenant's household needs and the needs of his animals but to such village necessities as khalyans, kolhus, fodder and cowdung stacks, smithies, weaving sheds, etc. The zamindar is a landholder and not a landlord. He holds his land on condition that he pays revenue and affords reasonable facilities for his tenants to increase the wealth of the country and enable them to pay their rent without which he cannot pay his revenue. What are reasonable facilities is a question of fact. The learned Judge seems to have a vague appreciation of this argument because, although the points for decision deal with possession of the disputed plot within 12 years, he ends his judgment by saying that the plot is appurtenant to the defendants' cultivatory holding. This means that the plot is necessary to the defendants for carrying on the occupations which are connected with their cultivation. These occupations differ from district to district and have become more elaborate during the last 20 years owing to the enormous increase in acreage of sugarcane cultivation. It has not been satisfactorily proved that the constructions on this plot are appurtenant to the defendants' holding. I, therefore, remand the suit for finding on this issue: "Whether the constructions whatever they may be, on plot No. 907/1 are necessary to the defendants' cultivatory holding." Evidence can be given by both parties.

3. As regards the considerable area said to be about 26 yards by 14 yards which has been utilised by the defendants and other tenants for digging a pit for brick-making it cannot be said that this is appurtenant to the tenants' holding. Such a pit does not increase the wealth of the country and it is altogether objectionable, being close to the abadi. Tenants must either buy bricks from contractors in the ordinary way or arrange with the zamindars to construct a brick kiln at a distance from the village so as not to interfere with the amenities of village life. I therefore partly agree with the learned Munsif as far as the pit is concerned and allow the plaintiff's claim for possession. I do not agree, however, that the defendants should be ordered to fill up this pit because it appears that it has been dug at various times by different tenants and not by the defendants alone. The issue which I have remitted refers only to the land outside the pit. The finding should be returned to this Court within ten weeks. The usual ten days will be allowed on receipt of the finding for filing objections.