

(1923) 01 AHC CK 0079
In the Allahabad High Court

Jokhu Gadaria and Another

APPELLANT

Vs

Deokinandan Pandey and Others

RESPONDENT

Date of Decision : 19-01-1923

Acts Referred:

Citation : AIR 1923 All 489 : 77 Ind. Cas. 630

Hon'ble Judges : Ryves, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

Ryves, J.—This appeal arises out of a suit brought by the plaintiffs-appellants for the recovery of the possession of an occupancy holding on the allegation that their father had entrusted it to the ancestor of the defendants-respondents called Mata Badal as long ago as 1909 and that in spite of the repeated demands the defendants-respondents had failed to make over the holding to the plaintiffs. The claim was resisted on various pleas. The allegation in the plaint that the holding in question was entrusted to Mata Badal was categorically denied and it was further pleaded that the suit was not cognizable by a Civil Court and was barred by the principle of res judicata and by limitation. The plea of res judicata was urged on the ground that the parties had already litigated the question in the Revenue Court where a decision adverse to the plaintiffs was given. It appears that the plaintiffs had first gone into the Revenue Court describing the defendants as their sub-tenants and asking for their ejectment. The defendants pleaded that some time prior to 1906 the plaintiff's father had left the village and the Zemindar had resumed the holding. In 1906 the Zemindar gave the holding in question to Mata Badal and the latter executed a patta in favour of the Zemindar on the 10th of September 1906 since when Mata Badal and after his death his descendants have been in possession. The plea for the defence was accepted in the Revenue Court and the claim of the plaintiffs was dismissed. The same plea is also repeated on behalf of the defence in the present suit. The lower Courts, however, have not gone into the merits, of the case but have disposed of

it on the legal plea that the suit is not maintainable in a Civil Court. They have relied on the case of Baljit v. Mahipat 49 Ind. Cas. 118 : 17 A.L.J. 60 : 41 A. 203. It is not denied in appeal before me that the said case covers the present suit but it is contended that the earlier rulings are in favour of the plaintiffs-appellants. I find that there is a ruling subsequent to that reported in Baljit v. Mahipat 49 Ind. Cas. 118 : 17 A.L.J. 60 : 41 A. 203 that of Ram Das v. Dubri Keri 77 Ind. Cas. 139 : 20 A.L.J. 606 : (1922) AIR All. 336 : 44 A. 724 which affirms the principle laid down in the case of Baljit v. Mahipat 49 Ind. Cas. 118 : 17 A.L.J. 60 : 41 A. 203 referred to above. I, therefore, consider that the judgment of the Court below is correct and dismiss the appeal under Order XM, Rule 11.