

(1922) 06 AHC CK 0022
In the Allahabad High Court

Maulvi Mahomed Naseer and Another	Vs	APPELLANT
Mahabir Das and Another		RESPONDENT

Date of Decision : 08-06-1922

Acts Referred:

Citation : 70 Ind. Cas. 836

Hon'ble Judges : Stuart, J

Bench : Single Bench

Judgement

Stuart, J.—The findings of fact show that the defendants, having been granted a user of certain land for certain purposes, used it for purposes other than the purpose for which it had been, granted, by digging a baoli which is used by the public. This baoli was constructed 27 years before the date of suit. The plaintiffs, who are the proprietors of the village, took no active steps to prevent the baoli being constructed, but, at the same time, did not consent to this construction. The lower Courts have dismissed the plaintiffs' suit upon a finding of equitable estoppel. The decision of the lower Courts cannot be upheld. The question was considered at some length by their lordships of the Privy Council in the case of Beni Ram v. Kundan Lal 21 A. 496 : 1 B.L.R. 400 : 3 C.W.N. 502 : 26 I.A. 58 : 7 S.P.C.J. 523 (P.C.) and applying the law laid down in that decision to the facts of the suit out of which this appeal arises, it is clear that the defendants have no case at all. There was no question of the owner standing by, watching the construction of the baoli being, made by a person who was under a mistaken belief that the land was his own property; in order to gain an advantage. The defendants could not have believed that the land was their own property, and there is nothing to show that the plaintiffs had any sinister motive in abstaining, at the time, from protest. I should have been glad in this particular case to grant a pecuniary compensation instead of the relief desired in the plaint, but I do not think that I should be justified in concluding a case like this merely by the award of a pecuniary compensation. The plaintiffs, in my opinion, are entitled to have the land put in the state, in which it was before, and I, therefore, allow the appeal and direct that a decree be prepared for the removal of the trees, and

filling up of the baoli, within a period of six months of the date of the decree. It will be for the defendants to carry out the removal of the trees and the filling up of the baoli. If they do not do so within the specified period, the plaintiffs will be at liberty to do the work themselves and charge the costs of so doing as costs in the case. The defendants will pay their own costs and those of the plaintiffs in all Courts.