

(1915) 04 AHC CK 0039
In the Allahabad High Court

Musammat Lahaso Kunwar

APPELLANT

Vs

Mahabir Tewari and Others

RESPONDENT

Date of Decision : 09-04-1915

Acts Referred:

Citation : AIR 1915 All 330 : 29 Ind. Cas. 15

Hon'ble Judges : Henry Richards, C.J;Tudball, J;P.C. Banerji, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

1. This appeal arises out of a suit in which the plaintiff sought a declaration that the share of the plaintiff and the defendants Nos. 38 and 39 amounts to fths in a plot No. 703, and that she might have a decree for joint possession of the plot and for removal of a thatch and for the restoration of a ditch said to have been filled in. Notwithstanding the pleadings it is quite clear that the (contesting) defendants' contention was not that the plot in question did not form part of the joint property of the co-sharers, but that they for a very long time had been in possession and had sunk a well and made certain constructions. In the lower Appellate Court the defendants raised no controversy as to the proprietary title of the parties to the plot in question. All that they contended was that having regard to the long time they had been in possession, the plaintiff was not entitled to pull them out or to have the constructions demolished. It is perfectly clear that in the event of a partition the plot in question will have to be taken into consideration. The authority making the partition will have regard to the rules that as far as possible parties in possession shall be left in possession and if that is found to be impossible and a certain plot (on which are buildings) in the possession of one party has to be put into the lot of another, rent will be assessed. Where one co-sharer is for many years in exclusive possession of a particular plot and makes constructions thereon, the presumption is that he is so in possession with the consent of the co-sharers. The other co-sharers cannot after lying by for many years come in and ask to have the constructions

demolished. We think that the view taken by the Court below was correct and ought to be affirmed. There is no question of adverse possession in the case. We dismiss the appeal with costs.