

(1931) 03 AHC CK 0057
In the Allahabad High Court

Nabi Mahomed

APPELLANT

Vs

Bhagwat Prasad Shukul and Others

RESPONDENT

Date of Decision : 25-03-1931

Acts Referred:

Easements Act, 1882 — Section 60

Citation : AIR 1932 All 33

Hon'ble Judges : Sulaiman, Acting C.J.

Bench : Division Bench

Final Decision : Allowed

Judgement

Sulaiman, Ag. C.J.

1. This is a defendant's appeal arising out of a suit for ejectment. The only ground on which the plaintiffs came into Court to dispossess the defendants was that they were tenants in the village in possession of cultivatory holdings from which they had been ejected; that the house occupied by them on the abadi plot had been meant for purposes of cultivation in the said village, and having ceased to be cultivators they were liable to ejectment from the house. Both the Courts below came to a concurrent finding that the house occupied by the defendants was not an appurtenance to their agricultural holding. As a matter of fact the defendants were not merely tenants or cultivators, but were also dyers and printers who were carrying on the business of dyeing and printing along with agriculture. The finding of the lower appeal Courts was that

defendants' ancestor Turab settled here as printer and then some land was taken for agricultural purposes by this family subsequently. The house in question was built not as a tenant's house but as a printer's house.

2. On these findings the suit was naturally dismissed. A learned Judge of this Court relying upon the cases of Shohrat Singh v. Jhagru [1915] 30 IC 782 and Ram Harakh v. Bhaiya Ambika Datt Ram [1918] AC 257 has held that there was legal presumption that the house was an appurtenance to the agricultural holding

and not being rebutted the plaintiff was entitled to a decree for possession. It may be pointed out that in the first mentioned case the defendant was taking up the position that in the absence of proof by the zamindar that the house was appurtenant to the holding the occupier had acquired title to the site by adverse possession. That was of course a startling proposition which was rejected by Knox, J. No doubt he did remark that there was a presumption in favour of the site occupied being an appurtenance to the tenancy, but in the very next sentence he pointed out that circumstances would be different if there were more than one site in the occupation of the tenants. The second case is not a case of this Court, and there the defendant was a mere tenant and not a trader at all. We concede that where a village is a purely agricultural village and a person is a purely agricultural tenant and occupies, a house on a site belonging to the zamindar, then, without any other evidence, there would be a presumption that his house is appurtenant to his holding. But a slight change of circumstances may alter the result as was pointed out by a learned Judge of this Court in the case quoted by Knox, J., at p. 748 of the record.

3. We are not prepared to hold that when it was alleged by the plaintiff expressly in the plaint that the house was appurtenant to the holding and he adduced evidence in the first instance to prove this fact and failed to satisfy both the Courts below that the house was appurtenant to the holding, that although the defendant is a trader carrying on a business of dyeing and printing, it was not open to the lower appellate Court to find that the house having been built before his ancestors began to cultivate the lands would not be an appurtenance to the holding. Under these circumstances it was incumbent upon the defendants to prove by direct evidence that under the express terms of the lease they had a right of residence.

We may point out what has been conceded by the learned Judge of this Court that this was the case of a site having been granted to an occupier for building a house. In the absence of any express terms to the contrary, the case would come u/s 60, Easements Act, under which a license cannot be revoked when, the licensee, acting upon the license, has executed a work of a permanent character and incurred expenses in the execution. Where the house is found not to appertain to an agricultural holding, the ordinary presumption is that a person who has built a house on the site belonging to the zamindar has a right of residence to occupy it so long as the house stands, or he does not abandon it. This right can be inherited by his legal heirs; but in the absence of any custom is not transferable.

4. We must accordingly allow this appeal, set aside the decree of the learned Judge of this Court and restore that of the lower appellate Court with costs in all Courts.