

(1915) 07 AHC CK 0041
In the Allahabad High Court

Pratap Singh and Another

APPELLANT

Vs

Dhum Singh and Another

RESPONDENT

Date of Decision : 08-07-1915

Acts Referred:

Easements Act, 1882 — Section 62

Citation : 30 Ind. Cas. 581

Hon'ble Judges : George Knox, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

George Knox, J.—The plaintiffs are the appellants in this Court. They come to Court as zemindars of a village in Dehra Dun. They say that the defendant, Dhum Singh, is a tenant of a certain plot of land in that village that the defendant, Dhum Singh, and his son, lialbir Singh, members of a joint Hindu family, have cut down a number of kokat trees which stood on the land belonging to the appellants. They prayed for a decree for Rs. 50 on account of the price of trees cut down, Rs. 25 as actual and deterrent damages and for perpetual injunction restraining the defendants from interfering in any way in future with the jungle. The respondents plead that there is a custom whereby the tenants are authorized in this village to use the jungle of the zemindars. They say that they have all along cut wood from the said jungle for their own use and stored it. This cutting is confined to kokat trees which I understand to mean trees mainly used for firewood, Both the Courts have found the custom set up by the respondents not proved. Behind that finding in second appeal I cannot go. At the same time the question raised is a very big question and it may be doubted whether the decision about custom has been rightly arrived at, but as I said before I cannot go behind it in second appeal and I am bound by it so far as this case is concerned. Both the Courts have found it proved that the tenants in this village have been allowed by the predecessor-in-interest of the appellants to cut firewood free of charge in land belonging to the appellants, and out of this they have construed a license granted by the appellant's predecessors to the

respondents to go upon the land in possession of the then zemindars and to cut firewood free of charge. The lower Appellate Court then went on to consider whether that license has been specifically revoked. It came to the conclusion that it had been specifically revoked when the present suit was brought. It accordingly decreed the claim for injunction but dismissed the claim for damages.

2. The appellants come into this Court and take the plea that after the transfer from the predecessor of the present appellants, the action of the defendants in cutting firewood was unauthorized and they are liable to pay damages found due by the first Court. I do not quite understand why they took the first plea in their memorandum of appeal, viz., that u/s 62 of the Easements Act the license granted by the former zemindar may be deemed to have been revoked when he sold his rights in the village to the plaintiffs. This plea has, however, been taken and I go on to consider it. It has been contended on the opposite side that the license in the present case is not a mere license, such as would be the case if the respondents had been granted permission merely to go upon the land of the zemindar. There was, the contention runs, a license coupled with a grant, license to go upon the land coupled with the grant to cut and take firewood from the land. In support of this contention I was referred to a passage in the Tagore Law Lectures of Mr. Peacock on the Law relating to Easements in British India. Reference is there made to the case of *Thomas v. Sorrell* Vaughan. 124 E.R. 1098. Apparently the Court's library does not possess a copy of Vaughan, but the passage in question will also be found in the case of *"Wood v. Leadbitter (1845) 13 M & W. 838 : 14 L.J. Ex. 161 : 9 Jur. 187 : 67 R.R. 831.* in which Lord Chief Justice Vaughan is reported as saying in the course of his judgment: A dispensation or license properly passeth no interest, nor alters or transfers property in anything, but only makes an action lawful, which without it had been unlawful. As a license to go beyond the seas, to hunt in a man's park, to come into his house, are only actions which without license, had been unlawful. But a license to hunt in a man's park, and carry away the deer killed to his own use, to cut down a tree in a man's ground, and to carry it away the next day after to his own use, are licenses as to the acts of hunting and cutting down the tree, but as to the carrying away of the deer killed and tree cut down, they are grants." This case has been applied in *Prosonna Coomar Singha v. Ram Coomar Ghose* 16 C. 640. Chief Justice Petheram in that case held that the law in this matter (this was anterior to the passing of the Indian Easements Act) is the same in this country as it is in England, there being so far as we can see no common law in this country on the subject and no statutory law either. The law in England is clearly laid down in the case of *Wood v. Leadbitter (1845) 13 M & W. 838 : 14 L.J. Ex. 161 : 9 Jur. 187 : 67 R.R. 831.* The Courts have acted upon the law as there laid down ever since, and it has always been held to be good law and binding upon them. That case decided that the license to go upon another man's land, unless coupled with a grant, was revocable at the will of the grantor, subject to the right of the other to damages if the license were revoked contrary to the terms of any express or implied grant." I notice that in that case the very point been in this

case was also taken for the first time before the High Court.

3. Holding as I do that this is the law on the subject even after the passing of Act V of 1882, the case appears to me to come within Section 60 of Act V of 1882. When the transfer was made, the transferee had no higher right than his transferor. The transferor was not in a position to revoke the grant or the license, because the latter was coupled with a transfer of property and such transfer is in force. I am all the better able to hold this, because as I said in the beginning of my judgment the contrary holding would be a matter of great importance in the Dun.

4. The result is that the appeal is dismissed. The decree of the lower Appellate Court is set aside and the plaintiff's suit dismissed with costs in all Courts. Under the circumstances I do not think it necessary to take up the memorandum of objections. They fall and disappear with the result of the case.