

(1927) 01 AHC CK 0052
In the Allahabad High Court

Ram Pratab Singh and Others

APPELLANT

Vs

Lal Bahadur Singh and Others

RESPONDENT

Date of Decision : 21-01-1927

Acts Referred:

Citation : (1927) 01 AHC CK 0052

Hon'ble Judges : Iqbal Ahmad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Iqbal Ahmad, J.—This is a plaintiffs' appeal and arises out of a suit for possession of a plot of land by demolition of certain constructions made thereon by the defendants-respondents. The plot in dispute is admittedly situate in the patti of which the plaintiffs-appellants are the zemindars, and on a portion of the said plot, the house of the defendants exists. The plaintiffs' case was that the constructions complained of (a stable, a pigeon house and a cattle trough) were recently made by the defendants without the plaintiffs' permission and as such the plaintiffs were entitled to a decree for possession of the site of those constructions by their demolition.

2. The defence to the suit was that the constructions in dispute were old and the suit was time-barred, and that the suit was barred by the principle of acquiescence. These pleas taken in defence have been overruled by both the Courts below and I am not concerned with them in the present appeal. The defendants also alleged that the disputed constructions were made by them on a portion of the sahan of their house and as such the plaintiffs are not entitled to the reliefs prayed for by them. This contention of the defendants was overruled by the trial Court but has been accepted by the lower appellate Court.

3. In my judgment the decision of the lower appellate Court is perfectly correct and ought to be affirmed. On the findings of the lower appellate Court it must be taken that the disputed constructions have been made by the defendants on a

portion of the land that constitutes the sahan of their house. So long as the defendants remain tenants in the village, and so long as their house exists, the plaintiffs zemindars have no right to possession of the site of their house or to possession of the sahan of their house. This being so, obviously a decree for possession as prayed for by the plaintiffs cannot be granted to them. There remains the question as to whether or not the plaintiffs are entitled to a decree directing the demolition of the new constructions and the restoration of the site to its original condition. In my judgment, the plaintiffs are not entitled, as a matter of right, even to such a decree. The defendants as ryots in the village are entitled to put to such use their sahan as suits their convenience, provided by doing so they do not in any way adversely affect the proprietary rights of the zemindars. By making the new constructions on the sahan the defendants have only altered the mode of enjoyment of a portion of the area of the land appertaining to their house and by this alteration in the mode of enjoyment, the plaintiffs have not been damnified in any way. The view that I take is in consonance with the view taken in the cases of Bhagwan Das v. Muhammad Yahia [1913] 35 All. 292 Mahabal Kurmi v. Sarju [1917] 4. O. L J. 454 and Mahadeo Rai and Others Vs. Jan Muhammad and Others,

4. The case of Jagannath v. Gurdiyal Singh [1911] 10 I.C. 284 and Chatterpal v. Gajadhar Upadhyaya [1914] 25 I.C. 59 relied on by the trial Court are distinguishable from the present case. In neither of those cases the plots of land on which the new constructions were built by the ryots without the permission of the zemindar were a portion of the house of those ryots. They were open plots of land in the abadi of the village and, therefore, the ryots obviously had no right without the permission of the zemindar to make new constructions on the same. The case of Rehmat Ullah v. Badam Singh (6) relied on by Dr. Sen is also distinguishable. In that case a chabutra was built by certain Muhammadan residents of a village, without the permission of the zemindar on an open piece of land that admittedly belonged to the zemindar, but it was alleged by those Mahomedans that they had used the land from time immemorial for the performance of their religious observances and as such were entitled to build a chabutra on the same. In that case as well, the site of the chabutra did not constitute a portion of the area of the house of the defendants to that suit. It goes without saying that in all the three last-mentioned cases a decree for possession of the site of the constructions sought to be demolished could be passed in the plaintiffs' favour which, as shown above, cannot be done in the present case, and as such the decision in those cases cannot govern the decision of the present case.

5. For the reasons given above I dismiss the appeal with costs.