

(1927) 05 AHC CK 0015
In the Allahabad High Court

Sheo Harakh Upadhya and Others

APPELLANT

Vs

Jai Gobind Tewari and Others

RESPONDENT

Date of Decision : 12-05-1927

Acts Referred:

Citation : AIR 1927 All 709

Hon'ble Judges : Ashworth, J

Bench : Division Bench

Judgement

Ashworth, J.—This second appeal arises out of a suit brought by the plaintiff-respondent for demolition of a certain baithak by the defendant first party, who is appellant in this appeal, on joint parti (vacant) land. The first Court dismissed the suit on a finding that this piece of land had long been in the exclusive possession of the appellant, and that the plaintiff had acquiesced in the construction of the building. In first appeal the lower appellate Court found that the appellant was established in exclusive possession of the plot although it belonged to both the parties. It found that the construction of the baithak was recent, the land hitherto being occupied by the cattle trough of the defendants. It refused to decree to the plaintiff joint possession of the plot but decreed demolition of the baithak.

2. In this appeal it is urged that the lower appellate Court, having found that the appellant was in established exclusive possession, should not have decreed demolition of the baithak but should have allowed the building to stand, leaving the plaintiff his remedy, if any, at the time of partition. Reliance is placed upon a decision in *Lahaso Kunwar v. Mahabir Tewari* [1917] 37 All. 412.

3. This ruling has nothing whatever to do with the present point. It was held in *Lachmi v. Ganga Din* [1908] 5 A.L.J. 93. that one of several joint owners is not entitled to make a building on the joint property without the consent of other joint owners notwithstanding that the erection of such building might cause no direct loss to the other joint owners, and that in such a case a mandatory injunction ought to be granted. The question arises whether the proposition just

stated requires any modification where it is found that the land built on has been in the exclusive possession of the person erecting the building. Of course, if the building was erected long ago, it will be presumed that the co-sharer in exclusive possession, who erected the building, did so with the permission of the other co-sharers. No such presumption can be made in a case like this where the erection is of recent date and has been objected to from the beginning. The principle to be applied in this case is whether the erection of the building by the appellant is in keeping with the method of exclusive possession hitherto enjoyed by the appellant. If so, there should be no interference, the other co-sharers having allowed the appellant to occupy exclusively in a certain way must be deemed to have consented in advance to any use of the land consonant with the exclusive possession permitted. In the present case, however, the appellant is attempting to build a sitting room on land hitherto merely used for trough for cattle. This is to alter the character of the appellant's exclusive possession, and it might have a prejudicial result to the plaintiff in the event of partition. In any case the plaintiff is entitled to object to this use of the land as unauthorised by him either expressly or by implication. The lower appellate Court was, therefore, in my opinion, justified in passing a decree that it did and the appeal is dismissed with costs.