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(1914) 07 BOM CK 0003

In the Bombay High Court

Case No : Second Appeal No. 54 of 1913

Sitabai Raghunath Karmakar — APPELLANT

Vs

Shambhu Sonu Gajana — RESPONDENT

Date of Decision : 07-07-1914

Acts Referred:
Transfer of Property Act, 1882 — Section 108A

Citation : AIR 1914 Bom 312(1) : (1914) 16 BOMLR 595

Hon'ble Judges : Hayward, J;Beaman, J

Bench : Division Bench

Judgement

Beaman, J.—The only question argued before us is whether the defendants, who are found to be permanent tenants, have a right to cut trees upon the lands demised. The plaintiff is found to be the owner of the lands, but the tenants upon the principle stated in Section 83 of the Land Revenue Code are found to be the permanent tenants, that is to say, the origin of their tenancy is lost in antiquity. The dispute between the plaintiff and the defendants now centres upon the right of the defendants to cut down trees which ex concesis and by the admission of the plaintiff they have themselves planted. In these circumstances we entertain no doubt whatever but that the defendants have the right which they claim. The English law of fixtures and the principle upon which it is based;; have no general applicability in this country. Therefore, before the passing of the Transfer of Property Act, which deals expressly with circumstances like these, we must be referred, in the absence of any special usage, to what we con ceive to be principles of equity, justice and good conscience, and none of those in our judgment compel us to say that a permanent tenant who has planted trees upon his lands is precluded from cutting down and making use of them. It is unnecessary to discuss the numerous cases to which we have been referred, since the principle of our judgment is very simple, very clear, and has since found Legislative sanction in Section 108, Clause (A), of the Transfer of Property Act. It has been contended that that section does not apply to agricultural leases, and we are not supposing that it does, but we do think that the principle to which

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it gives expression are principles which, for the most part, were good law in respect of the facts covered by them before they found Legislative expression in the Transfer of Property Act, and among such would certainly be the principles upon which we found our decision here. We think, therefore, that the decree of the lower appellate Court must be confirmed and this appeal dismissed with all costs.

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