

(1923) 07 AHC CK 0038
In the Allahabad High Court

Syed Zahur Hasan and Others

APPELLANT

Vs

Mt. Shaker Banoo and Others

RESPONDENT

Date of Decision : 30-07-1923

Acts Referred:

Citation : (1923) 07 AHC CK 0038

Hon'ble Judges : Kanhaiya Lal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Kanhaiya Lal, J.—The dispute in this appeal relates to a plot of land situated in Jhansi which was at one time occupied by a house belonging to Muhammad Zahur. Muhammad Zahur was a ryot. The zamindari rights of his father in the village were, it is said, sold some time before 1882. Muhammad Zahur worked as a karinda of his father-in-law, who had a zamindari share in Busgit; his wife and children lived in Busgit, while he kept up his connection with Jhansi. He died in 1887. The house in question fell into ruins some time afterwards and the question for consideration in this case is whether the defendants, who are the heirs of Muhammad Zahur, had abandoned the house after the death of Muhammad Zahur and allowed it to fall into ruins so as to entitle the zemindar, namely the defendant No. 9, to resume the land on which the said house stood and grant the right of occupancy thereof to the present plaintiff-respondent. The plaintiff-respondent owns a house adjacent to the land in dispute and her allegation is that license to build a house on the land so abandoned was granted to her by the defendant No. 9 in September 1919. She complains that when she wanted to build a house on the said land the defendants-appellants interfered and prevented her from making constructions over the same. It is also said that the said defendants then hurriedly collected some materials and built certain walls and a room in order to keep the plaintiff out of the enjoyment of that site.

2. The defendants deny having abandoned the site. The Court of first instance found in their favour, but the lower Appellate Court held otherwise.

3. The question at issue is really one of fact depending very largely on the evidence of intention afforded by the conduct of the plaintiffs since 1887.

4. The lower Appellate Court has referred in details to the various facts established by the documentary evidence produced, tending to show that the defendants had abandoned their residences in the house in dispute and settled elsewhere, that from 1889 onwards they described themselves as residents of Busgit, and that though three members of their family had been buried at Jhansi, one having come there to live with his wife and the other two temporarily on account of plague, none of them is shown to have occupied the house in dispute which was lying in ruins from long before.

5. The lower Appellate Court has also pointed out that if any of the members of the family did come to Jhansi for temporary purposes, they came and stopped in other houses with other people and showed no intention of either retaining the site of the house in dispute under their control, to rebuild and maintain the house after it had been allowed to fall into ruins.

6. The learned Counsel for the defendants-appellants contends that the plaintiff as a licensee had no right to sue; that the inferences drawn by the lower Appellate Court from the facts found to have been established were not justified, and that in any case the defendants should be deemed to have continued to be the owners of the site in question and so have a right to build thereon. The right of the plaintiff to stop the defendants-appellants from interfering with her constructions was denied by the defendants-appellants on the ground that the latter had not abandoned the site; but her right as a licensee to file a suit was never questioned in any of the Courts below or in the Memorandum of Appeal filed in this Court.

7. In fact, if the finding of the lower Appellate Court " that the defendants-appellants had abandoned the site and allowed the house to fall into ruins so as to entitle the zemindar to resume the same is correct, the right of the zemindar to grant a license to the plaintiff to occupy the site and build a house thereon cannot be questioned. The decision in *Basdeo Rai v. Dwarka Ram* (1916) 38 All. 178 has no application because that was a suit between a licensor and a licensee, and the question was what was the proper remedy in a case where the licensee has been ousted by the wrongful revocation of the license. The finding arrived at by the lower Appellate Court on the question of abandonment is based not so much on inference as on the conduct of the defendants since 1889 onwards and the intention to be gathered therefrom.

8. In *Hazari Lal and Another Vs. Nimar and Others*, it was held in somewhat similar circumstances in respect of land occupied by a grove, the trees whereof had been cut, that the land having been abandoned by the original grove holders, and having remained waste for over 12 years and reverted to the zemindars, and the successors of the original holders could not presume possession and plant a new grove thereon without the permission of the

zamindars.

9. As regards the site, there can be no question that on the sale of the proprietary rights, if any, possessed by the father of Muhammad Zahur, the entire land appertaining to the property sold passed to the auction-purchaser; and by operation of law of the judgment-debtor became a ryot and the rights of the judgment-debtor in respect of the site occupied by his dwelling house were reduced to the position of the other persons residing in the village.

10. The appeal, therefore, fails and is dismissed with costs.