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SooperKanoon Citation : sooperkanoon.com/447307

Court : Allahabad

Decided On : Feb-03-1927

Reported in : AIR1930All89

Appellant : Farhatullah

Respondent : Mohammad and ors.

Judgement :

Boys, J.

1. This and the connected S.A. No. 1091 of 1924 relate to certain construction in the nature of houses and to the digging of a well on plot 82 inside a village abadi. The zamindar sued for the demolition of the houses and the filling up of the well. The facts of these cases very rarely appear with precision. But as I appreciate the facts in this case it has been found that there is plot 72 in the village; that on a portion of that plot there is the house of the defendant tenant; that the whole of the plot has been recorded as in his exclusive possession ever since 1903: that no portion whatever of the plot is 'uftada.' The tenant has now added to his house and has dug a well somewhere on this plot 72.

2. The various circumstances under which these constructions are made and in which land or houses come into the possession of individuals are very often very obscure, unless the matter has already at some time been the subject of litigation. This frequently results in the pleadings being proportionately ill-informed. In this

case the tenant set up that the constructions complained of were of very old standing, and as regards the well, that it had been dug with the consent of the zamindar. It has been found that the constructions in the nature of houses are new and that the well was not constructed with the consent of the zamindar. But it has been also held that the consent of the zamindar was not necessary, with the result that the whole suit has been dismissed by the lower appellate Court. The trial Court had partly decreed and partly dismissed and hence there were two appeals before the lower appellate Court, and the plaintiff's case being wholly dismissed by the lower appellate Court has resulted in the two present appeals. It has been urged first that the suits were dismissed on a ground which was never set up by the defendant tenant. This is a perfectly fair criticism, but for the reasons that I have given above I am not prepared to hold the defendant too strictly bound to his pleading.

3. The second point taken is that the tenant had no power to make these constructions without the consent of the zamindar. I have had a number of rulings quoted to me on this disputed point by counsel for either party. In *Chhatarpal v. Gajadhar* [1914] 25 I.C. 59, there is nothing to show that the land was in any way appurtenant to the house. It is merely described as having been near the house. It may have been wholly separate. In *Mohammad Taqi v. Dori* A.I.R. 1924 All. 723, and in *Jagannath v. Gurdial* [1911] 10 I.C. 284, it would appear that the land on which the constructions were built was not in the exclusive possession of the tenant. On the other hand through a series of cases what, if I may say so appears to me to be the practical and sensible proposition has crystallised, that a tenant may build either a house or a well inside his house or on land actually appurtenant to and adjoining his house, which forms part of the site on a portion of which his house stands provided at any rate that such construction is not detrimental to the other interests of the zamindar: see *Bhagwan Das v. Mohammad Yahia* [1913] 35 All. 292; *Mahadeo Rai v. Jan Mohammad* : AIR1925 All341 ; *Mahabal liurmi v. Sarju* [1917] 4 O.L.J. 454 and *Sheo Sahai v. Rajeshwari* [1919] 6 O.L.J. 281. The result is that in my opinion both appeals must fail and they are dismissed accordingly with costs.

