

Hamid Uddin Vs. Akbar Husain

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Court : Allahabad

Decided On : Jan-21-1937

Reported in : AIR1937All372

Appellant : Hamid Uddin

Respondent : Akbar Husain

Judgement :

Niamatullah, J.

1. I have heard this case at considerable length, and in my opinion the decree passed by the lower appellate Court must be upheld. After a careful consideration of the relevant papers I do not however find myself in agreement with that Court that the plaintiff has failed to establish his title to the land in dispute. It is perfectly clear that at a partition of the entire village in 1287 Fasli plot No. 255/2 was allotted to Patti Maharaj Bahadur, which now belongs to the plaintiff. The latter's case is that the present corresponding number is 69/B, a fact which is admitted by the defendant. In this view, there is no doubt left that the plaintiff is the owner of the land in dispute. The learned District Judge has held to the contrary, because the plots said to be corresponding to No. 255/2 in certain quinquennial settlement were shown as parts of other pattis. This cannot be correct in view of what had happened at the partition of 1287 F. The entries at the quinquennial settlement or, for the matter of that, in other settlements, so far as they are opposed to the

entries in the partition 'chitthis,' must be held to be incorrect.

2. The plaintiff's case must however fail on the question of limitation. The suit being one under Section 44, Agra Tenancy Act, the period of limitation is that prescribed by serial No. 2 of Group B, Schedule 4 of that Act, which provides limitation of 12 years to be computed from the date when the landholder first knew of the unauthorized occupation of the land by the defendant. It is in the evidence of the plaintiff's father, from whom he has derived his title under a deed of gift, that the defendant was in possession of the land in suit when an application for partition was made in 1325 F. of Patti Jamiluddin. He goes on to say that he does not know how long before that application the defendant was in possession of the land in suit. The year 1325 Rule corresponds to 1917-18. We know the exact date on which such application was made. It is 14th May 1918. The present suit was instituted on 14th October 1929, nearly 12 years after that application. It is for the plaintiff to prove that he obtained knowledge of the defendant's unauthorized occupation within 12 years. The plaintiff has failed to show that he came to know of the defendant's occupation within 12 years of the institution of the suit. The result of my findings is that the appeal is dismissed with costs. Leave to appeal under the Letters Patent is refused.

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