

Ghuriya and ors. Vs. Baneswar and ors.

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SooperKanoon Citation : sooperkanoon.com/448722

Court : Allahabad

Decided On : Jul-28-1924

Reported in : AIR1925All30; 83Ind.Cas.202

Appellant : Ghuriya and ors.

Respondent : Baneswar and ors.

Judgement :

Sulaiman, J.

1. This is a plaintiff's appeal arising out of a suit brought for ejectment against the defendants on the allegation that the defendants were his subtenants.
2. Baneshwar, one of the defendants, pleaded that he was not a sub-tenant at all and that there was no relation of landlord and tenant between the plaintiffs and him. He asserted that he held possession of this land as his khudkasht, being himself a proprietor.
3. The first Court framed two issues:
 - (1) Does the relation of landlord and tenant exist between the parties?
 - (2) Is the Defendant No. 3 himself a zamindar and the plots in dispute his khudkasht?

It came to the conclusion that the Defendant No. 3 was not a sub-tenant but was in possession as proprietor, and that the claim having been brought more than six months after dispossession, was barred by time.

4. The plaintiffs preferred an appeal to the District Judge who held that the possession of the zamindar was in collusion with the ostensible lessee, his karinda, who was not the real lessee of the plot. He held that the zamindar himself was the real lessee and that his karinda was a mere benamidar. On this finding he naturally decreed the suit.

5. On an appeal by the defendant to this Court, a learned Judge of this Court has allowed the appeal and directed that the memorandum of appeal be returned to the plaintiff for presentation to the proper Court inasmuch as in his opinion no appeal lay to the District Judge. The view taken by the learned Judge was that in a case of this kind no question of proprietary title was raised.

6. This view is in direct conflict with the pronouncement of the Full Bench in the case of Bindsri Pande v. Gokul (1914) 36 All. 183, which apparently was not cited before the learned Judge. The ease is on all fours with the case decided by the Full Bench and cannot be distinguished.

7. We accordingly allow this appeal and setting aside the order of the learned Judge of this Court restore the decree of the lower appellate Court with costs.