

Kuber Rai Vs. Shyam Narain Rai

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SooperKanoon Citation : sooperkanoon.com/449289

Court : Allahabad

Decided On : Jul-20-1942

Reported in : AIR1943All46

Appellant : Kuber Rai

Respondent : Shyam Narain Rai

Judgement :

Allsop, J.

1. This appeal arises out of a suit in which the plaintiffs alleged that the boundary between two villages was not fixed and prayed that the boundary should be fixed by the Court. There can be no doubt now that there are three pillars on the site which appear to mark the boundary between the two villages. The learned Munsif, who tried the suit made a local inspection and found them there. He passed a decree in favour of the plaintiffs because he came to the conclusion that the stones were not in the proper place according to the map of the settlement. The learned Judge of the lower appellate Court found that stones represented the boundary and came to the conclusion that there was no cause of action for the institution of the suit. The argument in second appeal has been based upon the contention that the stones do not represent the true boundary. There is no explanation of the existence of the stones or at least two of them except that they are supposed to represent the boundary between the land of the two villages. It

seems to me that the argument of the appellants is based on an assumption which is not justified, namely, that the map of the locality is so accurate that it can be relied upon with greater assurance than the locality itself. There is in fact a great possibility of error in arguments based on measurements. In the first place, the measurements on which the original map was based may not have been accurate within certain limits. In the second place, the map itself may not have been quite accurate in accordance with the measurements. In the third place, when the locality is to be re-measured there is again a possibility of mistake in the measurements and in taking the distances in accordance with the scale of the original map. In my judgment it is much safer to rely upon the actual boundary pillars which exist upon the plot than to base a conclusion upon a map made at the settlement and subsequent measurements made at the present time to show that the pillars are not the real boundary between the two villages. The learned Munsif himself, who passed a decree in favour of the appellants, has found that these boundary pillars were for all practical purposes treated as the boundary between the two villages and had been apparently for a considerable time. I see no reason to differ from the learned Judge of the lower appellate Court and I dismiss the appeal with costs. Leave to appeal is refused.