

Sheikh Ibadullah Vs. Lachmi Narain

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Court : Allahabad

Decided On : Jan-22-1926

Reported in : AIR1926All350

Appellant : Sheikh Ibadullah

Respondent : Lachmi Narain

Judgement :

1. On the 7th September 1923, the defendant; sold a certain house, situated in Orai, to the plaintiff. A sale deed was executed, in which a nim tree, said to be standing on waste land No. 29 Khasra of the village Shahpur, was also included in order to enable the parties to have the sale deed registered by the Sub-Registrar of Derapur, within whose jurisdiction the village Shahpur was situated. When the sale deed was presented for registration, the defendant refused to get it registered. The Sub-Registrar, however proceeded to register the deed, because one of the properties specified in the sale deed was stated to be a tree situated within his jurisdiction. The present suit was filed by the plaintiff for the recovery of possession of the house in dispute, and the question for consideration was whether the registration of the sale deed by the Sub-Registrar of Derapur was valid. Both the Courts below found that the registration was inoperative.

2. No attempt appears to have been made to define the exact situation of the tree or to point out the precise spot where it existed within the large area of waste land, which must have appertained to the village mentioned, or whether any other nim

tree also stood there. The lower appellate Court observes that the inclusion of the tree in the sale deed was a mere fiction introduced with the obvious purpose of getting registration effected in Derapur. It further points out that a nim tree is essentially standing timber, and, as such, it must be regarded as moveable property. Immoveable property, as defined in the Registration Act, excludes standing timber, growing crops and grass; and, as held in *Krishnarao v. Babaji* (1900) 24 Bom 31 timber must be deemed to imply only such trees as are fit to be used in building and repairing houses, and a nim tree must be regarded as primarily a timber tree, the wood whereof is fit to be used for such purposes and moveable property for the purpose of registration. In *Ramman Lal v. Ram Gopal* AIR 1916 Oudh 211 it was held that, while trees of a grove cannot be regarded as standing timber, because the sale of such a grove would not necessarily involve the idea of severance, the sale of a standing tree, the wood of which is generally used for building purposes, implies an intention sooner or later to sever the tree from the soil. No portion of the land where the tree in question is said to have stood was included in the sale. If any tree was really intended to be sold the idea in the minds of the parties must have been that the vendee would sever it from the land at his convenience. The nim tree in question cannot therefore be regarded as an immoveable property within the meaning of the above definition.

3. It is argued on behalf of the plaintiff-appellant that the nim tree yields some fruits, from which oil is manufactured and that the oil cakes are used by cattle as food; but whatever may be the purpose to which these fruits may in some form or another indirectly be put, a nim tree is primarily a timber tree and the fruits of the nim tree are not, in the ordinary course of things, treated as edible fruits. The Court below was, therefore, right in holding that the inclusion of an indefinite nim tree, standing on the waste land of a village, did not validate the registration of the sale deed in the office of the Sub-Registrar, within whose jurisdiction the village in which that nim tree may have stood was included. The learned Counsel for the plaintiff has asked that the suit may be treated as one for the specific performance of a contract of sale; but the suit is not so framed. If the registration is invalid, no effect can be given to the sale deed, and the plaintiff must seek his remedy, if any, in the manner provided by law.

4. The appeal is therefore dismissed under Order 41, Rule 11.

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