

Bajrang Sahai Vs. Mt. Mulia

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SooperKanoon Citation : sooperkanoon.com/453578

Court : Allahabad

Decided On : Sep-05-1941

Reported in : AIR1941All399

Appellant : Bajrang Sahai

Respondent : Mt. Mulia

Judgement :

Allsop, J.

1. This is a second appeal arising out of a suit for ejectment from a plot of land and the buildings standing upon it. The Courts below passed a decree in favour of the plaintiffs who claimed to be the owners of the land. The defendant was a transferee from the heirs of one Bijai who is said to have been the tenant of the plot. Some evidence was produced by the defendant to prove that there was a condition that the lease of the land should be a permanent one, but the Courts below have disbelieved it. The Courts have believed the statement of a woman who described herself as Bijai's wife that Bijai was the tenant of the land paying rent and the rent was increased four times in a period of 15 years. From this they have drawn the conclusion that Bijai was an ordinary lessee of the land.

2. Learned Counsel for the appellant has argued that there is a rule of law that a lease of land for building purposes is a permanent lease. This proposition seems quite contrary to the provisions of Section 106, T.P. Act, which say that a lease for

purposes other than agriculture or manufacture shall be deemed to be a lease from month to month terminable at the will of the lessor. There is no proof of any contract or local law or usage to the contrary in this case. Learned Counsel has referred to two cases of this Court, namely *Kanhaiya Lal v. Abdullah* : AIR1936 All385 and *Sitara Shajahan Begam v. Munna* : AIR1927 All342 . Neither of these rulings is an authority for the proposition which learned Counsel for the appellant has placed before me. They are cases where it was found that the source of the defendant's occupation was lost in antiquity and the Courts merely said that in such circumstances where there was a permanent structure on the land it might be presumed that the land was granted under the condition that the person putting up the construction should not be ejected. That is not the same as laying down a general proposition that the lease for the purpose of putting up a permanent construction must be deemed to be a permanent lease. The finding in the present case of the Courts below is that there was a lease on certain terms and consequently it must be deemed to be a lease from month to month. There is no force in this appeal. I dismiss it with costs. Leave to appeal under the Letters Patent is refused.