

Surya Dat Vs. Jamna Dat

Surya Dat Vs. Jamna Dat

SooperKanoon Citation : sooperkanoon.com/454808

Court : Allahabad

Decided On : May-05-1920

Reported in : (1920)ILR42All568

Judge : Tudball and ;Sulaiman, JJ.

Appellant : Surya Dat

Respondent : Jamna Dat

Judgement :

Tudball and Sulaiman, JJ.

1. Briefly put, the facts of this case are as follows: Jamma Dat, respondent, judgment-debtor, brought a suit for partition of certain property which included the house now in dispute. His allegation was that he and Bala Dat were jointly in possession of the property; that it was joint family property, and that he, Jamna Dat, was entitled to a half share therein. The court of first instance gave him a preliminary decree in respect of a half share in the house; in respect of the other property it dismissed the suit. Both parties appealed, Pending the appeal a final decree for partition of the house was drawn up, under which the lower story of the house was allotted to Jamna Dat. On appeal this Court held that Jamna Dat had no title whatsoever either to the house or to the other property. Jamna Dat's appeal was dismissed. The appeal of the opposite party was allowed and the decree of the first court set aside and the suit dismissed. The decree-holder, the

son of Bala Dat, then applied to the court below for restitution in respect to the house, i.e , the lower storey of the house. He stated that after the final decree was passed by the court of first instance Jamna Dat had taken exclusive possession of the lower portion of the house which had been allotted to him by that decree. He, therefore, claimed that, as possession had been taken by Jamna Dat under colour of the decree, and that decree had been set aside, he should be removed from possession of that portion of the house. Jamna Dab did not deny in his reply the allegation that he had taken possession of the lower portion of the house which had been allotted to him by the final decree. He raised some other futile pleas, among them being one that Bala Dat had before his death made an oral will giving him the whole of the house, although as a matter of fact at that time the litigation between him and Bala Dat was pending.

2. The court below has disallowed the application on the sole ground that as Jamna Dat did not take possession in execution of his decree through the court, the opposite party is not entitled to restitution under Section 144 of the Code of Civil Procedure. The attention of the lower court was clearly not drawn to a decision of this Court in Sheodihal Sahu v. Bhawani (1907) I.L.R. 29 All. 348, which was also followed by the Calcutta High Court. It is obvious that under the terms of Section 144, where a decree-holder under a decree gets possession of the property decreed to him otherwise than by executing the decree but under colour thereof, and that decree is set aside on appeal, the opposite party is clearly entitled to be replaced in possession.

3. It is argued before us on behalf of Jamna Dat that as he was in joint possession before the partition suit so the parties should be placed in joint possession now. It is obvious that this cannot be done. He has given up his joint possession and taken exclusive possession of the part of the house which was given to him under the decree. Under the final decision of the case he is no longer entitled either to joint possession of the whole or to the exclusive possession of a part. He has no title whatsoever, and we think it is the duty of the court to place the decree-holder in exclusive possession of the lower part of the house and to remove Jamna Dat therefrom. We, therefore, allow the appeal and set aside the order of the court below. We remand the case to the lower court with directions to re-admit it and to

proceed to place the appellant Surya Dat in possession of the lower part of the house by removing therefrom the respondent Jamna Dat. The appellant will have his costs in both courts.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com