

Sheikh Chamru Vs. Bhaggan

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SooperKanoon Citation : sooperkanoon.com/456461

Court : Allahabad

Decided On : Nov-22-1929

Reported in : AIR1930All219

Appellant : Sheikh Chamru

Respondent : Bhaggan

Judgement :

1. This is a reference by the learned Munsiff of Allahabad asking for the opinion of this Court as to whether he or the revenue Court should try the suit.

2. It appears, on the facts found both by the revenue Court and the civil Court, that, initially, there was an occupancy holding belonging to the parties to the present reference and consisting of four plots of land. Two of these plots, 1275 and 1276, are still under cultivation. Two other plots, which are much smaller in area, are no longer under cultivation, and on a portion of one of these plots, namely, 966, the opposite party, Sheikh Bhaggan, has built a small house. The plaintiff (Sheikh) Chamru wanted that plots Nos. 996 and 967 (now not cultivated) should be partitioned. Evidently he thinks that any vacant land that he may get he would be able to bring under cultivation. The suit was originally instituted in the revenue Court. Sheikh Bhaggan took the plea inter alia that the suit was not cognizable by the revenue Court. His ground was that plots 966 and 967 were no longer under cultivation. This plea found favour with the learned Assistant Collector, and he dismissed the suit.

3. The plaintiff, Chamru, had to file a second suit in the civil Court. Then Bhaggan raised the plea that the civil Court had no jurisdiction to hear the case. The learned Munsiff has accordingly made the present reference.

4. We are of opinion that the revenue Court had jurisdiction to hear the suit for partition and it will be the revenue Court, which will again hear the case.

5. Section 37, Tenancy Act, permits one of several tenants to institute a suit for division of a holding. Holding is defined as a parcel of land held under one tenure. This would naturally refer to the engagement under which the land was taken. It may be that part of the land, originally taken for agricultural purposes, has been converted into abadi land with or without the consent of the landlord. But this would not interfere with the original engagement. In this view a division of a holding which includes all the lands that were originally let out will lie in the revenue Court.

6. We direct the Court below to return the plaint to the plaintiff for presentation to the proper Court. We also direct that it will order the defendant to pay all the costs before it to the plaintiff. The costs of this reference will also be paid by the defendant.