

Har Gobind Vs. Daulatia and ors.

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SooperKanoon Citation : sooperkanoon.com/456546

Court : Allahabad

Decided On : May-29-1920

Reported in : (1921)ILR43All18

Judge : Tudball and ;Sulaiman, JJ.

Appellant : Har Gobind

Respondent : Daulatia and ors.

Judgement :

Tudball and Sulaiman, JJ.

1. This is a Letters Patent appeal from the decision of a single Judge of this Court. The facts are simple. The plaintiff respondent brought a suit in the Revenue Court trader Sections 63 and 58 of the Tenancy Act, seeking to eject; the defendants appellants from certain land, alleging himself to be the tenant in-chief and the defendants to be sub-tenants. The defendants contested the suit on the ground that they were co-tenants with the plaintiff in the land and that they were not sub-tenants nor were they liable to ejectment at his instance. The court of first instance decided in favour of the defendants and dismissed the suit. The plaintiff then went In appeal to the District Judge. The District Judge on the facts Same to the opposite conclusion to that arrived at by the first court and gave the plaintiff a decree, The defendants appealed to this Court and they raised the point that the District Judge had no jurisdiction to hear the appeal, as under the law no appeal

lay to him. This was a plea which was not taken in the court of the District Judge. The learned Judge of this Court in regard to this plea of jurisdiction said as follows:

As to the plea of jurisdiction no objection was taken in the court below that it had no jurisdiction to entertain the appeal. Moreover, the allegation of the plaintiff that he was the sole tenant and that the defendants were his sub-tenants was denied by the latter thus raising the question of the title of the plaintiff to eject the defendants. The appeal fails and is dismissed.

2. Apparently the Judge of this Court, thought that the question between the parties was one of proprietary title as contemplated by Section 177, Clause (e). It is true, the Judge has not used the words 'proprietary title,' but it is quite a fair inference to be drawn from his remarks at the end of his judgment. The dispute clearly was one which did not relate to a question of proprietary title. It was the ownership of a tenancy right alone that was in dispute and not the ownership of the zamindari, i.e., a proprietary right. The point is covered by a decision of this Court in *Niranjan v. Gajadhar* (1908) I.L.R. 30 All. 133, which overruled the decision of a single Judge of this Court in *Chhitar Singh v. Rup Singh* Weekly Notes. 1906 p. 247. This decision has been repeatedly followed in this Court. Not only do we see no reason to differ from it, but we consider it to be correct. The words 'proprietary title' in the Tenancy Act do not refer at any place to tenant's rights at all, but to the rights and interest of the proprietary body of zamindars. It is true that the plea of jurisdiction was not taken in the court below, but the question is one purely of law and in no way involves a question of fact. The decision of it requires no further inquiry as to the facts and we think that it is right and proper that we should deal with it in this appeal. It is obvious that no appeal lay to the District Judge, that his decision was one passed without jurisdiction and that it must be set aside. We, therefore, allow this appeal, set aside the decree of this Court and of the lower appellate court. We direct that the memorandum of appeal be returned to the plaintiff for him to file in the proper court. Under the circumstances we think that the parties should pay their own costs both in this Court and in the District Judge's Court.