

Mt. Bibi Ramji Vs. Karim

Mt. Bibi Ramji Vs. Karim

SooperKanoon Citation : sooperkanoon.com/459457

Court : Allahabad

Decided On : Mar-08-1927

Reported in : AIR1927All544; 101Ind.Cas.630

Appellant : Mt. Bibi Ramji

Respondent : Karim

Judgement :

Dalai, J.

1. A zemindar sued a Muhammadan ryot for removal of a pakka mosque built by him and for possession of the land underneath. This is a second appeal, and I am bound by the findings of fact recorded by the learned Judge of the lower appellate Court. He held that in place of this pakka mosque there was a kachcha mosque' at the same spot belonging to the Muhammadans of the village prior to 1925 and that three years prior to the institution of the suit in August 1922, the Muhammadans had commenced rebuilding the mosque and turning the kachcha building into a pakka one and had collected materials in such a way as to warn the zemindar of their intention, On these grounds he held that though neither the kachcha nor the pakka mosque was built with the permission, of the zemindar, the zemindar was estopped by reason of the principles of acquiescence from having the mosque demolished now.

2. Mr. Haribans Sahai, on behalf of the appellant zemindar, quoted a Bench ruling of this Court reported in *Basa Mal v. Ghyas-ud-din* [1904] 27 All. 356. The original judgment in the case, which was set aside by the Bench, was delivered by a Judge who was subsequently recognized as a Judge of great merit in this Court, Mr. Justice Piggott. He had held that a tenant who changed a kachcha house, where prayers were offered by the Muhammadans of the village, into a pakka mosque, and was not stopped at the commencement of the building of the mosque, had a right to maintain the mosque by reason of the principle of acquiescence. The learned Judges here gave it as their opinion that the tenant could not possibly have had a bona fide belief that he had a right to dedicate for ever to religious uses, to the detriment of the landlord, such portion of the abadi as he was allowed to occupy as a residential house. It appears, therefore that the real issue to be kept in mind in deciding these cases is whether the person who acted in contravention of his right had a bona fide belief or not that he did possess the right to erect the building. In the present case an ordinary house used for residential purposes was not converted into a mosque. It has been found by the learned Judge that what existed in this place before was also a mosque. In the *wajib-ul-arz* the prohibition is against building a new building (*makan jadid*) without the permission of the zemindar. Such a clause may honestly be interpreted not to preclude the alteration of a kachcha house into a pakka one.

3. The facts of the present case, therefore, are distinguishable from those of the ruling cited by the learned Counsel as it may safely be held that the defendant did have a bona fide belief that he had a right to turn a kachcha house into a pakka one. That the zemindar was long neglectful of his rights follows from the finding of the lower appellate Court that he did not object for three years though he had full warning as to what was intended and subsequently as to what was actually taking place. The same principles were enunciated by their Lordships of the Privy Council in the case of *Beni Ram v. Kundan Lal* [1899] 21 All. 496. There also their Lordships held that the respondent was not acting under a mistaken belief of his right and, therefore, was not entitled to claim protection under the principles of acquiescence. On the findings of the lower appellate Court this appeal cannot succeed, and I dismiss it. I pass no order as to costs.

