

Dauru and anr. Vs. Badri and anr.

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Court : Allahabad

Decided On : May-01-1944

Reported in : AIR1944All239

Appellant : Dauru and anr.

Respondent : Badri and anr.

Judgement :

Allsop, J.

1. The properties involved in these two Letters Patent appeals are plots Nos. 810, 817, 313, 274 and 841 in Patti No. 13 in the village of Roshanabad. The plaintiffs in the suit which has given rise to the appeals were Badri and Makhan and the defendants were Dauru and Lahauri. The plaintiffs alleged that they were the owners of the plots in suit and that the defendants were interfering with their possession. The plaintiffs' alleged, cause of action was that the defendants would not let them remove the wood of fallen trees in the plots. They alleged that they had acquired a half share in the plots under a deed of sale executed by Lahauri on 29th September 1932, and the other half share under a foreclosure decree against Dauru which was dated 6th January 1934. They sought an injunction restraining the defendants from interfering with their possession. The defendants claimed exproprietary rights in favour of the plots and said that the fifth, No. 274, was waste land and that there was no cause of action in respect of it.

2. All the Courts have held that there was no cause of action in respect of No. 274 and we are no longer concerned with that plot. In respect of plot No. 841 the learned single Judge of this Court held that it was not sir land but that the plaintiffs had acquired only a half share in it because it was included in the foreclosure decree but was not included in the deed of sale executed by Lahauri. We have not been shown any reason for differing with the decision of the learned Judge in respect of this plot. The other three plots were admittedly sir and they were the subject of a usufructuary mortgage executed by the two defendants in the year 1929. At that time the defendants became ex-proprietary tenants, rent being fixed by the revenue Court. There can be no doubt that they have been ex-proprietary tenants ever since. The learned single Judge of this Court held, in accordance with the decision of the Full Bench in *Firat Husain v. Liaqat Ali* : AIR1939 All291 , that the defendants were entitled to the fruit of the trees but that they were not entitled to the wood of any tree which had fallen down. He issued an injunction accordingly in respect of these three plots.

3. It has, however, come to our notice from affidavit presented by the plaintiffs themselves in the course of the Letters Patent appeal that Lahauri was dead when the judgment of the learned single Judge was delivered and that no steps had been taken to implead anybody as a representative for him. As this matter has come to our notice, it is quite clear that we cannot allow the decree to stand against a dead person. The lower appellate Court had dismissed the suit of the plaintiffs on the finding that the civil Court had no jurisdiction. In so far as Lahauri is concerned, that decision cannot be reversed. In so far as Dauru is concerned it seems to us that the decision of the learned Judge of this Court was right. The revenue Court could not grant an injunction and a decree for damages after removal of the wood as it would not be an adequate relief. This man had no claim to plot No. 841 and he was only an ex. proprietary tenant in plots Nos. 810, 817 and 313 so that he could enjoy the fruit of the trees but not the wood of any tree which had fallen down. In the plaintiffs' appeal it is urged that the trees were specifically transferred by the deed of sale executed by Lahauri and consequently that Lahauri was not entitled even to the fruit. In so far as Lahauri is dead and is not represented, the decision in his favour by the lower appellate Court cannot be changed. Even if he were alive or represented we should still have to hold, in view

of the Full Bench decision to which we have referred, that he was not the owner of the trees because he had transferred them but he was still entitled to the fruit as an ex-proprietary tenant having become so by process of law. The plaintiffs' appeal must fail and is hereby dismissed with costs. The defendants appeal on behalf of Dauru must also fail and is also dismissed with costs, but in view of the fact that Lahauri is dead, we direct that the decree of the learned single Judge shall be modified. Where it says that the plaintiffs are also granted an injunction against both the defendants with regard to Nos. 810, 817 and 313, it shall be corrected and in place of the words 'both defendants' there shall be substituted the word 'Dauru.'

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