

Attar Singh Vs. Asa Ram

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Court : Allahabad

Decided On : Sep-12-1939

Reported in : AIR1939All732

Appellant : Attar Singh

Respondent : Asa Ram

Judgement :

Allsop, J.

1. This second appeal arises out of a suit for partition of an enclosure No. 416. Inside this enclosure there are several buildings or sub-divisions Nos. 994 to 1001. The trial Court passed a preliminary decree in favour of the plaintiff. The lower Appellate Court has confirmed the decree except about the sub-divisions Nos. 995, 996 and 997. In respect of these three sub-divisions the Judge has come to the conclusion that the plaintiff has failed to prove that he had any title to the property. It appears that these three sub-divisions were in the year 1867 owned or possessed by three men, Ishwari, Bhawani and Khairati, while the sub-divisions Nos. 994 and 998 to 1000 were owned or possessed by one Amrut, No. 1001 was common court-yard. The grandsons of Amrit were Sheo Dat, Shugan Chand and Nihal Chand. Shugan Chand, on 23rd February 1920, executed a deed of sale by which he purported to transfer the whole of the subdivisions Nos. 994 and 997 to 1000 to Munshi Ram, Bucha Mal and Asa Ram, the share of Munshi Ram and

Bucha Mal being one-half and that of Asa Ram, one-half. On 13th July 1930 Sheodat sold his proportionate share in the whole enclosure No. 416 to the same vendees in the same-shares. Nihal Chand, on 27th April 1927, also sold his share to the same vendees. On 30th November 1927 Bucha Mal sold his share to Munshi Ram and Munshi Ram's share passed through the Bhagwandas Bank to the plaintiff. At one stage the plaintiff's predecessors-in-interest had purchased Asa Ram's share, but the plaintiff sold this share back to Asa Ram on 3rd May 1929. On an examination of the documentary evidence the learned Judge of the lower Appellate Court has found that the vendors of the subdivisions Nos. 995, 996 and 997 had no title to the property and therefore that the vendees could have no title. That was his reason for dismissing the suit of the plaintiff for a partition of these three sub-divisions.

2. The argument in appeal put shortly is that the parties had come into possession of these disputed sub-divisions in accordance with the sale deeds executed in their joint favour and that it is not how open to the defendant to deny the plaintiff's title. Learned Counsel has relied upon the oases in *Pramada Nath Ray v. Poorna Chandra Ray* (1908) 35 Cal. 691 and *Corea v. Appuhamy* (1912) A.C. 230. These cases are authority for the well-known proposition that the possession of one co-owner is the possession of the other and that one co-owner cannot set up an adverse title to other co. owners without some definite and open act of ouster. The principles there set forth do not apply to the facts of the present case because to state that the parties are co-owners is to beg the whole question in dispute. It has been found that they are not and never have been co-owners of this property. Where there is a title in certain persons jointly as tenants-in-common, then one must oust the other before he can claim a title adverse to him, but the whole point in this case is that there was no title at any time in the plaintiff. If the plaintiff had come into Courts with the allegation that he and the defendant had been in joint possession of the property for a period of 12 years, then he could doubtless have based his claim on prescription, but he did not make any such allegation, nor did he prove it. It seems to me that the appellant could succeed in this appeal only if he could show that one of two joint trespassers was unable to oppose in a suit for partition the title of the other and no authority has been shown to me in support of this proposition.

3. The case has been decided by the learned Judge of the lower Appellate Court upon the simple ground that the plaintiff in order to succeed must establish his title and that no such title has been established in any way. Learned Counsel for the appellant has not satisfied me that the decision of the learned Judge is wrong. This is not a case where the defendant alleges that the plaintiff had, at one time, a title and lost it by prescription. It is a case where the defendant has put the plaintiff to proof of his title and the plaintiff has not discharged the burden cast upon him. There is no force in this appeal and I dismiss it with costs. Leave to appeal under the Letters Patent is granted.

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