

Bindyachal Prasad Vs. Suraj Prasad

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Court : Allahabad

Decided On : Mar-07-1946

Reported in : AIR1948All48

Appellant : Bindyachal Prasad

Respondent : Suraj Prasad

Advocate for Pet/Ap. : Mr. Lari

Judgement :

Pathak, J.

1. This appeal relates to a plot of land situate within the Municipal limits of the city of Gorakhpur. In the trial Court, another-plot of land also was in dispute but the appeal in this Court is not concerned with that plot of land and it is not necessary to mention the controversy between the parties in relation to that plot. The plot in dispute in this appeal is No. 126 and is marked ABCD on the Amin's map.

2. It appears that the parties are cousins and by virtue of a deed of partition, dated 15-2-1928, two houses were partitioned between the parties. It was contended by the plaintiff in the Courts below and it has been contended before me that under the partition deed, the plot in dispute, which was described as a Sahan, was allotted to the plaintiff's father, Kolahal Ram. This contention has been repelled by both the Courts below. It is based upon the ground that. the northern boundary of

the house which was allotted to Suraj Prasad, the respondent before me, was described in the partition deed as 'maakn hkurd wo Sehan Kolahal Ram.' The Courts below have read this boundary as 'makan khurd Kolahal Ram wo Sehan.' There is no doubt that if the northern boundary of the house allotted to Suraj Prasad is read in the manner in which the Courts below have read it, the plaintiff's case fails. The original deed of partition is upon the record and I have examined the document myself and heard learned Counsel in support of his contention. I am, however, not prepared to say that the Courts below have erred in the interpretation of the document in question. If the Sahan, which admittedly is the property in dispute in this appeal, was allotted to Suraj Prasad, I am of opinion that the present plaintiff is not entitled to any relief in respect of that plot. In the deed of partition, the plaintiff's father expressly stipulated that after the execution thereof, he would have no concern with that plot and the., parties to the deed of partition would remain in exclusive possession over the properties allotted thereunder. The conclusion arrived at by the Courts below was strengthened by the fact that on an inspection of the locality, the trial Court found that the land in dispute appeared to be appertaining to the house of the respondent.

3. Mr. Lari, counsel for the appellant, has further submitted that it is not open to the respondent to make any construction on the plot in dispute. The Court below has found that the respondent has put up a boundary wall enclosing the plot in dispute and having regard to the fact that it is situated within the Municipal area, the appellant, according to that Court, has no right to the demolition of the boundary wall. I am not prepared to say that this conclusion of the lower appellate Court is wrong. The plaintiff should not be allowed to interfere, in any manner, with the property which had been allotted to the defendant under the deed of partition to which the plaintiff's father was a party. No right was reserved by him to interfere with the possession of the defendant or to restrict the enjoyment of the property which had been allotted to the latter. In my judgment the view taken by the Courts below is correct. The result is that this appeal is dismissed with costs.