

Bachchan and ors. Vs. Daulat Ram and ors.

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Court : Allahabad

Decided On : Mar-28-1935

Reported in : AIR1936All64; 160Ind.Cas.865

Appellant : Bachchan and ors.

Respondent : Daulat Ram and ors.

Judgement :

Allsop, J.

1. This second appeal arises out of a suit in which the plaintiffs claimed that they were the owners of certain trees growing in a plot of land and that they were not bound by a deed of sale of the plot with the trees upon it. The learned Judge of the lower appellate Court decided that the civil Court had no jurisdiction to decide the suit and passed an order that the plaint should be returned for presentation in the proper Revenue Court. His point was that the plaintiffs were, in fact, claiming to be grove-holders, and as they could receive adequate relief from the Revenue Court, they could not institute a suit which could be entertained by the civil Court. It is argued in appeal that there is a distinction to be made, because the plaintiffs are not claiming the land upon which the trees grow but only the trees themselves. A reference has been made to Ram Prasad v. Sumer Nath 21 ALJ 33 and Lalta Prasad v. Ram Bahadur 21 ALJ 434. These decisions were reached before the Agra Tenancy Act (Act 3 of 1926) was passed. The explanation to Section 230 of

that Act is in point.

2. There can be no doubt that the plaintiffs were, to all intents and purposes, claiming to be grove-holders. If they were not grove-holders, they could have no right to the trees. Their case was that the trees had been standing on this land for a long time and had been the property of their predecessors-in-interest. Copies of documents produced showed that when these plots were entered in the record as being in the possession of the predecessors-in-interest of the plaintiffs, they were described as grove-land. There can be no doubt that the plaintiffs-if they had any title at all had a title as grove-holders. As such, they come within the definition of a tenant under the Agra Tenancy Act. It is true that they are not, in so many words, claiming any right in any tenancy; but the fact appears to be that the question at issue has already been decided against them in the Revenue Court, and consequently they are making every attempt to get another decision from the civil Court. The explanation to Section 230, Agra Tenancy Act, has been introduced to prevent a person by a mere juggling with the form of a plaint or relief from outside the jurisdiction of the Revenue Court in favour of the civil Court. As the plaintiffs are claiming really to be grove-holders, they could obtain adequate relief from the Revenue Court under Section 121, Agra Tenancy Act. The question might of course, arise that they were impleading the defendants as trespassers, and not as persons claiming to hold through the land-holder. But it must be remembered that, in effect, this is not a dispute about isolated trees, but about the rights in a grove, and the plaintiffs have admitted in para. 4 of their plaint that Ram Charan, the vendor under the deed of sale which they are questioning, had a right to some trees in this plot. This is really a dispute . between rival grove-holders to the right to transfer a grove or part of a grove and as such it is a dispute which could well have been the subject of a suit under Section 121, Agra Tenancy Act. The plaintiffs could have obtained adequate relief in a suit under that section, and consequently the civil Court had no jurisdiction to try the suit which they did institute. In my opinion there is no force in this appeal. It has been urged that the plaintiffs appellant should not have been ordered to pay the costs of the other party an the civil Court. That was a matter for discretion; and if they through mistake or otherwise agitated the matter in a wrong Court and caused expenditure to 'the other party, I see no reason why they should not pay for it. I dismiss the

appeal with costs. Leave to appeal under the Letters Patent is granted.

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