

Mt. Chuman Vs. Nanhe Singh

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SooperKanoon Citation : sooperkanoon.com/464408

Court : Allahabad

Decided On : Mar-27-1930

Reported in : AIR1930All795

Appellant : Mt. Chuman

Respondent : Nanhe Singh

Judgement :

Mukerji, J.

1. This is a Letters Patent appeal against a judgment of a learned Judge of this Court and arises in the following circumstances. The respondent Nanhe Singh brought a suit for ejectment of the appellant Mt. Chuman and for recovery of two plots of land, namely 602 and 683. The defendant pleaded that she was an ex-proprietary tenant of these plots. On these pleadings the obvious duty of the Court of first instance was to refer to the revenue Court under Section 202, Tenancy Act, 1901, to obtain a declaration as to her status. Instead of doing that, the learned Munsif took it upon himself to decide the case on the merits and he decreed it.

2. On an appeal by the defendant, the learned Subordinate Judge discussed the merits of the case. He thought that there were two conflicting judgments of the revenue Court and the later judgment should prevail, viz: the one in which it was held that the defendant was an ex-proprietary tenant, and the revenue papers which recorded her as an ex-proprietary tenant should not be disturbed. This later

judgment was given because the respondent had made an application to the revenue Court to remove the name of the appellant from the papers. It appears that previously there was an application by the respondent to have rent assessed on these two plots on the ground that the defendant was an ex-proprietary tenant. But in that instance the appellant-defendant had avoided an assessment of rent on the land on the allegation that the lands were her groves and not an ex-proprietary tenancy. The learned Subordinate Judge, having held that the judgment of the revenue Court was binding on the parties, dismissed the suit.

3. The matter having come up before this Court, the learned single Judge thought that the defendant could not be allowed to make contradictory statements at different times and decreed the suit. It appears to us that the matter should go back to the Court of first instance, so that the procedure which ought to have been followed at once, should now be adopted.

4. We set aside the judgment of this Court and the decrees of the Courts below and remand the case to the Court of first instance with the following direction. An issue will be framed as to whether the defendant is a tenant of the land and a tenant of the plaintiff. This issue will be sent under Section 273, Tenancy Act, 1926, to the revenue Court for decision. The Munsif will decide the case in accordance with the decision of the revenue Court. Costs here and hitherto will abide the result.