

Sheo Prasad Vs. Dodi and anr.

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SooperKanoon Citation : sooperkanoon.com/465425

Court : Allahabad

Decided On : Jan-03-1929

Reported in : AIR1929All164

Appellant : Sheo Prasad

Respondent : Dodi and anr.

Judgement :

Dalal, J.

1. The two subordinate Courts have sought to legislate in the present litigation instead of following the clear dictates of law. They are of opinion that the provisions of Section 199(2) are hard and unjust and have therefore assumed the illegal attitude contrary to law of refusing to administer Statute Law. In the present case the plaintiff, a zamindar, sued the defendants for ejectment as a non-occupancy tenant and the defence was that the defendants a major and a minor under the guardianship of that major, had a proprietary right in the land, The Assistant Collector by order in writing required the defendants to institute within three months a suit in the civil Court for the determination of the question of title. This order was made on 18th October 1924. No suit, however, was brought, and the consequence of such neglect would be as enacted in Clause (2) of the section. The words are:

when an order has been passed under Clause (a), Sub-section 1, if the defendant fails to comply with it, the Court shall decide such question of title against him.

2. The Assistant Collector had no option but to decide that the defendants had no proprietary right in the land in suit. Instead of doing so the successor of the Assistant Collector, who had passed the order under Clause (a), proceeded to try the question of proprietary title himself and arrived at a finding that the defendants had such title. Once a Court has selected between the options given to it in Section 199, its jurisdiction is exhausted and it could not change its mind subsequently and proceed to adopt the other course which was open to it at the beginning. The subordinate Courts were bound to hold and I now hold that the defendants have no proprietary right in the land in suit.

3. It was argued on behalf of the defendants that the order of 18th October 1924 did not bind and was not directed against the minor Badri. This argument is not correct. At that time Badri was represented by his guardian Dodi and there was no defect in the representation. The order of 18th October 1924 was binding on both the defendants.

4. It is argued on behalf of the plaintiff here that the subordinate Courts have held that the defendants are non-occupancy tenants and not occupancy tenants. In my opinion that question has not been properly tried and decided. I set aside the decrees of the two subordinate Courts and holding that the defendants have no proprietary rights in the land in suit, remit the suit to the Court of the Assistant Collector for a trial on the merits after accepting the decision recorded by this Court. Costs here and hitherto shall abide the result.