

Net Ram Vs. Har Govind and ors.

Net Ram Vs. Har Govind and ors.

SooperKanoon Citation : sooperkanoon.com/466093

Court : Allahabad

Decided On : Aug-06-1928

Reported in : AIR1928All764; 113Ind.Cas.755

Appellant : Net Ram

Respondent : Har Govind and ors.

Judgement :

1. This is a reference by the learned District Judge of Agra under Section 267, Agra Tenancy Act (No. 3 of 1926).

2. Har Govind and others instituted a suit against Net Ram alleging him to be the sub-tenant of a holding, bearing No. 1439 and having an area of 16 biswas. Net Ram resisted the suit on the ground that he was not the sub-tenant of the plaintiff but he held the land as zamindar and the land in controversy was his khudkasht. This plea was repelled by the Assistant Collector, who found that the land was not the khudkasht of the defendant, and that the defendant was the sub-tenant of the plaintiff. He therefore granted the plaintiff a decree for ejectment. Net Ram preferred an appeal to the learned Commissioner of Agra Division, who returned the memorandum of appeal for presentation to the District Judge of Agra on the ground that the plea raised by the defendant involved a question of proprietary title and that the appeal lay to the District Judge and not to him. The District Judge of Agra entertains doubt about the propriety of the ruling of the Commissioner and is of opinion that having regard to the provisions of Section 271, Expln. 2, Agra

Tenancy Act. the question involved in the case is not one of proprietary title and the appeal therefore lay to the Commissioner and not to the District Judge. Section 271, Expln. 2 provides

A question of proprietary right does not include the question whether the land in the actual possession of the proprietor thereof is held by such proprietor as his sir and khudkkasht or as tenant or sub-tenant.

3. Assuming for the sake of argument that the defendant is a cosharer in the mahal in which the plot 1439 is situate and that the land is actually under the cultivation of the defendant, his plea that the plot is in actual possession in his capacity as a proprietor is clearly not a question of proprietary title within the meaning of Expln. 2. We are clearly of opinion that the view taken by the learned District Judge is correct. We answer the reference accordingly and direct that the memorandum of appeal be returned to the Commissioner for disposal according to law.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com