

Lachman Vs. Ratnakar Singh and ors.

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Court : Allahabad

Decided On : Mar-22-1934

Reported in : AIR1934All836; 153Ind.Cas.670

Appellant : Lachman

Respondent : Ratnakar Singh and ors.

Judgement :

Bennet, J.

1. This is a second appeal by the defendant against the decree of the lower appellate Court directing the removal of a certain chaupal which the defendant has erected on the abadi land of the village. The first ground taken was that the land was the sehan of the defendant's house and that the defendant had a right to use it for the purpose of his tenancy and the land was appurtenant to the tenancy. The finding of the Courts is that formerly there was no piece of ground in front of the defendant's house and that the defendant apparently tied his cattle on a part of that ground which may be said to be using the ground as a sehan, but there was no wall round the ground, nor was it marked off in any way. The next finding is that not more than three or four years before the suit the defendant' made a shed or chaupal a kind of lean to against his house, which is stated to be for his purpose of protecting his cattle. The use of the land as a sehan does not in my opinion justify the defendant in making the structure in question on it. No evidence has been

produced to show that this was an easement of necessity. Nor has that defence been taken. The next point which was argued was ground No. 2 that Article 32, Limitation Act, applied to the facts of the case and the Court below should have held that the suit was barred by two years' limitation. Article 32 is for a suit,

against one who having a right, to use property for specific purposes perverts it to other purposes.

2. Two rulings were produced on this article One of these rulings, *Jai Kishen v. Ram Lal* (1898) 20 All. 519 refers to the case of a tenant of an agricultural holding who planted trees on that holding. The other ruling *Lach Ram Rao v. Jungi Rai* (1911) 12 I.C. 108 refers to the case of mortgagees of an occupancy holding who made some structures for agricultural purposes on the occupancy holding. In each of these cases the plaintiff did not dispute the right of the defendant to remain in possession of the holding, and all that was asked for was the removal of the trees in one case and the construction in the other. Now in the present case the construction has not been made on a holding but on abadi ground. It is stated that that ground was used previously by the defendant as his sehan. It is not established that the use of a sehan was an easement of necessity or that an easement had been acquired under Section 15, Easements Act. Apparently the use by defendant of this land as a sehan amounted to a mere license under Section 52, Easements Act. No doubt that section states that the right is called a license, but I do not consider that Article 32 in referring to a right to use the property does not embrace a mere license to use the property. I consider that a distinction is to be drawn between a legal right to remain in possession of the property and a mere license which is revocable at any time. For this reason I do not consider that Article 32, Limitation Act, can be applied in the case as the possession by the defendant before the construction was made was that of a mere licensee.

3. The next point which was argued was that of estoppel. The finding of the lower Court was that:

If then the plaintiff chanced to learn about the building having come into existence behind his back in January 1927, etc.

4. This appears to be a finding that the plaintiff was not aware of the construction of the building until the construction had been completed. There was evidence, believed by the lower appellate Court, of the karinda of the plaintiff to the effect that he had twice told the defendant to stop the construction of the building and that the defendant on the second occasion had told him that he would obtain the permission of the plaintiff. On this finding I consider that there can be no estoppel because the finding is that the plaintiff was not aware of the construction of the building until the construction had been completed.

5. No other point was argued. The second appeal is dismissed with costs.

6. Permission is granted for a Letters Patent appeal.

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