

Bijai Vs. Narain

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Court : Allahabad

Decided On : Apr-06-1925

Reported in : AIR1926All45

Appellant : Bijai

Respondent : Narain

Judgement :

Piggott, J.

1. These two connected appeals arise out of two suits which were tried together. There was a dispute between Bijai and his brother Narain about a certain occupancy holding. Bijai claimed to be a joint tenant along with Narain. Each of them brought a suit in the civil Court to enforce his own claim. The first Court decided in favour of Bijai, but that decision was reversed on appeal. On the findings of fact recorded by the lower appellate Court I am satisfied that the second appeals filed by Bijai in this Court are not maintainable. In one of the memoranda of appeal reference is made to Section 187 of the Agra Tenancy Act. As a matter of fact, that section does not apply, because there is no article of the schedule to the Act under which a suit or application could have been made by these rival claimants to an occupancy holding, which would have brought the dispute between them to a determination. In any case the plea comes with an ill grace from Bijai, who has himself invoked the jurisdiction of the civil Court. The

lower appellate Court, in fact, found that Bijai separated from his father Faturi and his brother Narain, receiving his rightful share in the joint family property, and that he is at present in sole possession of an occupancy holding in respect of which Narain is preferring no claim. I must take the lower appellate Court also to have found that Narain and Faturi agreed to continue joint, or reunited after the joint status of the family had been broken by Bijai's withdrawal.

2. It was open to the lower Court to find on the evidence that, in spite of the fact that the name of Faturi alone was recorded as tenant of this holding in the village papers, the tenancy was really vested in the joint family consisting of Faturi and his son Narain. On this finding the case is governed by two decisions of this Court, each passed by a Bench of two Judges. The older in date is Mahabir Singh v. Bhagwanti (1916) 38 All 325 in which incidentally I regret to observe that the head note is absolutely misleading and misrepresents the principle of law which the learned Judges actually laid down. The same point was decided by another Bench of two Judges in Mindya v. Jhurya AIR 90 1 27. The latter decision, in my view, in view of the wording of Section 22 of the Agra Tenancy Act would, I think, not be denied by anyone; but sitting as a single Judge, I am bound to follow the decision above referred to. Nor do I wish to suggest that personally I doubt the correctness of those decisions. These appeals fail and I dismiss them accordingly.

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