

Hoti Lal Vs. Chuttan Lal

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Court : Allahabad

Decided On : May-13-1919

Reported in : AIR1919All262; 51Ind.Cas.15

Judge : George Knox Acting, C.J. and ;P.C. Banerji, J.

Appellant : Hoti Lal

Respondent : Chuttan Lal

Judgement :

1. An elaborate argument has been addressed to us in support of the appellant. We think the case may be decided upon a short and simple ground. The suit was not one either in form or in substance for determination of the rate of rent. The plaintiff clearly claimed arrears of rent at the rate mentioned in the plaint and he did so under Section 33 of the Agra Tenancy Act. The original holding of 55 bighas had been determined by proceedings for ejectment of the defendant from that holding. The plaintiff actually dispossessed the defendant from a large portion of the holding but as the land now in question was covered by rose plants the defendant was allowed to remain in possession first for the purpose of determining the compensation to be paid to him and subsequently as a tenant of that part of the holding. The defendant, who owned a share in the village, brought a suit against the present plaintiff for his share of profits. In that suit a question was raised whether the land in respect of which rent is now claimed was held by the defendant as khudkasht or as a tenant. The matter was referred to arbitration and

the arbitrator held that he held the land as a tenant, the rent being Rs. 105 a year. Both parties accepted the award. So that it may be taken that they agreed that the land now in question should be held by the defendant as a tenant, he agreeing to pay a rent of Rs. 105 a year. This was the finding of the Court of first instance and that Court rightly decreed the plaintiff's claim. The lower Appellate Court no doubt went into the question of the application of Section 34 of the Tenancy Act to the present case. That section had nothing to do with the case, inasmuch as the defendant was not in possession as tenant without the consent of the plaintiff. We think that it must be taken, as the first Court found, that the parties agreed that the defendant should hold this land at a rent of Rs. 105 a year. Therefore under Section 33 of the Tenancy Act he was liable to pay rent at that rate and the decree passed against him was, in our opinion, right and equitable. Section 35 on which the learned Advocate for the appellant relied, has no application to the present case. The original tenancy of 55 bighas came to an end and a new tenancy was created. We accordingly dismiss the appeal with costs.

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