

Gobindi Vs. Saheb Ram and ors.

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Court : Allahabad

Decided On : Jan-14-1909

Reported in : 1Ind.Cas.885

Judge : George Knox, Aikman and ;Griffin, JJ.

Appellant : Gobindi

Respondent : Saheb Ram and ors.

Judgement :

George Knox, J.

1. The facts out of which this appeal arises are as follows:

The appellant Musammat Gobindi was plaintiff in the Court of first instance. She brought the suit out of which this appeal has arisen to recover Rs. 397, principal and interest, on account of profits for the years 1310, 1311 and 1312 F. She alleged that her share in the village Lahra was half, and that the defendants respondents owned the other half. The respondents replied that she had not correctly given the extent of her share, that under an arbitration award which had been made a decree of Court, 73 bighas 3 biswas were given to her out of 89 bighas 2 biswas, half of a 3 biswas haqiat in khata, khewat No. (5 of mauza Lahra. Other matters were also urged in reply. But we are not concerned with those at present. The Court of first instance held that the appellant's share was half 3

biswas as recorded in the khewat, refused to go behind the recorded share, and decreed profits in her favour in proportion to this recorded share. The lower appellate Court refused to accept the entry in the khewat, held that it was an incorrect entry, that the appellant owned only 73 bighas 3 biswas of land, and that on this footing was entitled to no profits. It accordingly set aside the decree of the lower Court and dismissed the plaintiff's suit. In appeal before us it has been urged that as the appellant is a recorded co-sharer of half of 3 biswa, share, she is under Section 201, Clause (3) of the Tenancy Act of 1901, entitled to a decree for the full amount claimed by her, that the Court below could not go into the question as to whether the plaintiff's proprietary title was to be restricted to a lesser area than that recorded in the khewat. On this case coming before this Court, it was at first thought that the decision of the questions raised in the appeal turned upon the interpretation to be put upon Clause (3), Section 201, of the Local Act No. II of 1901, and as that clause had been differently interpreted by learned Judges in this Court in *Dil Kunwar v. Udai Ram*, 29 A. 148, *Banwari Lal v. Niadar* 29 A. 158 and *Dhanka v. Umrao Singh* 30 A. 58, the learned Chief Justice directed that the appeal should be laid before a Full Bench of this Court.

2. In view, however, of the fact that the extent of the proprietary rights of the appellant has been the subject of a decision by a Civil Court of competent jurisdiction, it seems to me that we need not in this case consider and that we ought not to consider the interpretation to be placed upon Clause (3), Section 201, of Act No. II of 1901. I refer to the decree passed by the Munsif of Hathras on the 8th of October 1901, in the suit brought by Musammat Gobindi against Saheb Ram and Birj Narain. That suit was referred to arbitration, and on the 8th of October 1901, the award was made a decree of Court--and out of 89 bighas 2 biswas, i.e., half of a 3 biswas haqiat, khata khewat No. 6 of mauza Lahra, now in dispute, 73 bighas 3 biswas were given to Musammat Gobindi and 15 biswas odd to Birj Narain. It was further added in the decree that Musammat Gobindi must pay Government revenue for the full half share 89 bighas 2 biswas. This was followed upon the 19th of October 1901, by an application presented by Musammat Gobindi to the Revenue Court, for the entry of her name over 73 bighas 3 biswas haqiat out of 89 bighas 2 biswas of khata khewat No. 6 of mauza Lahra. The Tahsildar who made an inquiry recommended to the Sub-Divisional Officer that

Musammat Gobindi's name should be entered as prayed for by her. The Assistant Collector acting upon this report on the 18th of November 1902, passed an order to the effect that Musammat Gobindi's name be entered in the khewat as recommended by the Tahsildar. Owing to some error, however, Musammat Gobindi's name was entered in respect of 89 bighas odd. It has thus been established by suit in a Civil Court that Musammat Gobindi has only proprietary right over 73 bighas 3 biswas and not over half share in Khata Khewat No. 6 of mauza Lahra. Owing to this decision of the Civil Court which was long prior to the date on which the present suit was instituted out of which this appeal arises, there is nothing left for the Court to presume. The view taken by the lower appellate Court is a correct view and in my opinion this appeal should be dismissed with costs.

Airman, J.

3. I concur in the judgment of my learned colleague and have nothing to add.

Griffin, J.

4. I also concur.

5. The appeal is dismissed with costs.

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