

Darbari Singh and ors. Vs. Ram Murat Singh

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SooperKanoon Citation : sooperkanoon.com/470481

Court : Allahabad

Decided On : Jun-28-1926

Reported in : AIR1927All98

Appellant : Darbari Singh and ors.

Respondent : Ram Murat Singh

Judgement :

Daniels, J.

1. This suit has been decided against the appellants on issues of fact. It has been found that the plaintiff's predecessor Katwaru Singh had a proprietary right in the land and that the plaintiff-respondent is his adopted son. The appellant has pressed two legal pleas:

1. Res judicata, and

2. Limitation.

2. The plea of res judicata is based on a misapprehension. The Munsif originally decided the suit against the plaintiff. An appeal was preferred, and the appellate Court allowed the plaintiff to withdraw both the suit and appeal under Order 23, Rule 1, Civil P.C., by an order of 11th September 1924, a certified copy of which is on the record. The appellant's learned Counsel was under the impression that only

the appeal was withdrawn but a reference to the original order shows that this was not so.

3. The facts on which the second plea is based are these: This suit was originally instituted in pursuance of an order of the revenue Court passed under Section 199 of the Tenancy Act. The original suit was filed within the three months allowed by the order under that section. That suit, as has been already stated, was withdrawn and the present suit was filed four days afterwards. The Courts below have held relying on, *Randhir Singh v. Bhagwan Das* [1913] 35 All. 541 and *Sheikh Muhammad v. Qadir Baksh* [1914] 12 A.L.J. 989 that the present suit is in continuation of the former suit and, therefore, not barred by the provisions of Section 199, Tenancy Act. The appellants contend that those cases should be distinguished on the ground that in those cases the fresh suit was filed on the next following day, whereas in this case there was an interval of four days, one of which was a holiday. It appears to me that the distinction is immaterial. Where the permission is given to file a fresh suit on, the ground of defects in the plaint it may not be always possible to get a correct plaint drawn up, signed, verified and filed within one day. The authorities relied on by the Munsif are applicable. I, therefore, dismiss the appeal under Order 41, Rule 11, Civil P.C.