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Court : Allahabad

Decided On : Dec-03-1923

Reported in : AIR1924All430; 79Ind.Cas.599

Judge : Kanhaiya Lal, J.

Appellant : Man Singh

Respondent : Madho Singh and ors.

Judgement :

Kanhaiya Lal, J.

1. The dispute in this appeal relates to a mango tree which formed a part o a grove standing in No. 254 Khasra of the village Nagla Lala and had fallen in a storm sometime in July 1921. The plaintiffs are the zemindars of that village. The defendant, Man Singh, is the grove-holder, or the descendant of the person who had originally planted the grove. The land in question was at one time his occupancy holding but the portion which is now covered by the grove was converted into a grove sometime before the old Settlement. The allegation of the plaintiffs was that the defendants had no right to sell the fallen wood and appropriate its price. The Courts below found in their favour and decreed the claim. It is objected on behalf of the plaintiffs that no Second appeal lies, because the suit was of a Small Cause Court nature. The allegation of the plaintiffs, however, amounted to a charge of criminal misappropriation of the wood; and

Clause 35 of the Second Schedule of the Provincial Small Cause Courts Act, 1887 excluded it from the jurisdiction of a Small Cause Court. Clause 43 A of the said Schedule would be similarly applicable. Even if these Articles had not been applicable, there would have been sufficient reason for converting this appeal into a petition in revision to meet the ends of justice. The main point about which the parties are at issue relates to the right of a person, who had planted a grove on what was originally an occupancy holding, to cut the trees or appropriate the fallen wood thereof. An occupancy tenant has no right to convert a portion of the occupancy holding into a grove. If he does so, the landholder has got the power to eject him for doing an act detrimental to the purpose for which the land was let under Section 57 of the U.P. Tenancy Act (No. II of 1901). But that power can only be exercised within one year from the date of the conversion. The defendant Man Singh stated that the grove stands on about two bighas of land and that it had been planted by his ancestors. The plaintiffs admitted that the tree in dispute was 80 years old. Their witness Roddar Singh similarly admitted that the tree in dispute appertained to a grove belonging to Man Singh whose ancestors had planted it. The general rule applicable to stray trees growing on an occupancy holding does not apply to groves planted by tenants with the implied or express acquiescence of the Zemindars. Where land has been let to a tenant for the special purpose of planting a grove thereon or where a grove planted by a tenant has been allowed to exist unchallenged by the Zemindar, the person who plants the grove acquires a transferable interest therein, and in the absence of a custom to the contrary the trees become his property (vide *Jalesar Sahu v. Raj Mangal* 63 Ind. Cas. 437 : 43 A. 606 : 19 A.L.J. 616, and *Baijnath Singh v. Chandrapal Singh* 73 Ind. Cas. 529 : 21 A.L.J. 457 : 1923) A.L.R.(A) 553. In *Nathan v. Karala Kuar* 13 A. 571 : A.W.N. (1891) 167 : 7 Ind. Dec.(N.S.) 361, it was held that a Zemindar claiming a right to the fallen wood of self-sown trees which had been growing on an occupancy holding must prove some custom or contract by which he was entitled to take such wood. This rule will apply a fortiori to a grove which has been planted by the tenant. In *Chokhe Lal v. Behari Lal* 60 Ind. Cas. 115 : 18 A.L.J. 820 : 2 U.P.L.R.(A) 292, it was held that under the general law a grove-holder possessed all rights in respect of his grove which were excluded by the provision of the *wajib-ul-arz*. When the *wajib-ul-arn* in the present instance was prepared the Zemindars

claimed that the grove-holders had no right to cut the trees standing in the grove without their permission, while the tenants claimed a right to cut the trees without any reference to the landholders, and no decision was arrived at. The grove in dispute unquestionably stands on a part of a larger holding, but, as the lower Appellate Court points out, the holding consists of a number of plots and the grove stands on one of them and forms a separate entity. The incidence of an agricultural holding does not attach to such a grove after it has been allowed to exist so long unchallenged. The appeal is, therefore, allowed and the suit of the plaintiffs dismissed with costs here and hitherto.

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