

Chatter Singh Vs. Ishri Prasad

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SooperKanoon Citation : sooperkanoon.com/471801

Court : Allahabad

Decided On : Dec-18-1909

Reported in : 5Ind.Cas.336

Judge : Piggott, J.

Appellant : Chatter Singh

Respondent : ishri Prasad

Judgement :

Piggott, J.

1. The cases Bradley v. Atkinson, 7 A. 899 : Harbansi v. Bholal A.W.N. 1890 p. 175 : Marcar v. Sigg 2 M. 239 at p. 246 : Dodhu v. Madhavarao Narayan Gadre 10 B. 110 marginally cited appear sufficient authority for the following propositions: A lessor suing for the ejectment of his lessee as such is bound to prove either the lessee had been duly served with notice sufficient to satisfy the provisions of Section 108 of the Transfer of Property Act (No. IV of 1882), or had denied the title of the lessor prior to the institution of the suit. Mere denial of title on the part of the defendant in the suit itself is not sufficient, as the plaintiff is bound to prove that he had a complete cause of action when he came into Court. Further this objection, on the ground of want of proof of service of notice or other valid cause of action on the part of the plaintiff, is one which goes to the root of the plaintiff's case, and should be entertained by the Court even though not explicitly taken by the

defendant until second appeal. I have examined the record of this case to see whether there had in fact been anything of the nature of an admission on the part of the defendant sufficient to meet this objection. I find on the contrary that the fact of service of notice was denied in the defendant's written statement. Under the circumstances I find no course open to me but to remit, the following issue for a finding by the lower appellate Court:

2. Was the defendant duly served with valid and sufficient notice prior to the institution of this suit or had there been any such denial of the plaintiff's title on the part of the defendant as to exempt the plaintiff from the necessity of serving notice?
3. The parties should be allowed to produce evidence which may be recorded either by the lower appellate Court or by the Court of first instance according as the learned District Judge may think proper.
4. Ten days will be allowed for objections on receipt of the finding.