

Mallah Vs. Behari and anr.

Mallah Vs. Behari and anr.

SooperKanoon Citation : sooperkanoon.com/472965

Court : Allahabad

Decided On : Feb-10-1915

Reported in : AIR1915All138; 28Ind.Cas.276

Judge : Chamier and Piggott, JJ.

Appellant : Mallah

Respondent : Behari and anr.

Judgement :

1. This is an appeal against an order of the First Additional Judge of Aligarh remanding for trial on the merits a suit which been dismissed as barred by limitation by the Munsif of Bulandshahr. The plaintiffs and the defendant were co-sharers in an occupancy holding. The plaintiff's brought this suit for recovery of Rs. 189-6-0 on account of profits of their share for the years 1318 to 1321 Fasli, on the allegation that the defendant had wrongfully taken possession of the entire holding and refused to give the plaintiffs any portion of the profits. The Munsif found that the plaintiffs had failed to prove possession or enjoyment of profits within 32 years of the suit. On appeal the Additional Judge hold that as the plaintiffs and the defendant had been admittedly joint occupancy tenants of the land, it was for the defendant to prove that he had ousted the plaintiffs from their share. In appeal it is contended that tin's view of the law is erroneous. In Ahmad Roza Khan v. Ram Lal 26 Ind. Cas. 922 : 13 A.L.J. 204 decided on the 16th of December 1914, we held that in a case of this kind the plaintiffs are entitled in the

first instance to rely on the presumption that possession was held by the defendant on behalf of the plaintiffs, and that it lay upon the defendant to prove that he had set up an adverse title to the plaintiffs' share to the knowledge of the plaintiffs for more than 12 years before suit. In the present case the defendant failed to prove this. It is urged that our decision in the case cited recognises that there may be cases of exceptional nature in which ouster may be presumed, and we are referred to the case of *Gangadhar v. Parash Ram* 29 B. 300 : 7 Bom. L.R. 252 on this point. We are asked to presume that the defendant ousted the plaintiffs from their share more than 12 years before this suit. In the Bombay case the lower Appellate Court had held in effect on the facts that there had been an ouster, and the High Court said that it was impossible for them to hold that there was no evidence of such ouster. They, therefore, dismissed the appeal. But in the present case the Additional Judge has declined to presume that there was an ouster of the plaintiffs, and we are not prepared to hold as a matter of law that ouster should be presumed in the present case. All that is known is that for many years the plaintiff's did not receive the profits of their share. In our opinion the view taken by the Additional Judge was correct. We dismiss this appeal with costs.