

Surya Datt Vs. Jamna Datt

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Court : Allahabad

Decided On : May-05-1920

Reported in : AIR1920All190(2); 57Ind.Cas.148

Judge : Tudball and ;Sulaiman, JJ.

Appellant : Surya Datt

Respondent : Jamna Datt

Judgement :

1. Briefly put the facts of this case are as follows:-- Jamna Datt respondent - judgment debtor brought a suit for partition of certain property which included the house now in dispute. His allegation was that he and Bala Datt were jointly in possession of the property, that it was joint family property and that he, Jamna Datt, was entitled to a half share therein. The Court of first instance gave him a preliminary decree in respect to a half share in the house; in respect to the other property it dismissed the suit. Both parties appealed. Pending the appeal, a final decree for partition of the house was drawn up under which the lower storey of the house was allotted to Jamna Datt. On appeal this Court held that Jamna Datt had no title whatsoever either to the house or to the other property. Jamna Datt's appeal was dismissed. The appeal of the opposite party was allowed and the decree of the first Court set aside and the suit dismissed. The decree-holder, the son of Bala Datt, then applied to the Court below for restitution in respect to the house, i.e., the lower storey of the house. He stated that after the final decree was

passed by the Court of first instance, Jamna Datt had taken exclusive possession of the lower portion of the house which had been allotted to him by that decree. He, therefore, claimed that as possession had been taken by Jamna Datt under colour of the decree and that decree having been set aside, he should be removed from possession of that portion of the house, Jamna Datt did not deny in his reply the allegation that he had taken possession of the lower portion of the house which had been allotted to him by the final decree. He raised some other futile pleas, among them being one that Bala Datt had before his death made an oral Will giving him the whole of the house, although as a matter of fact at that time the litigation between him and Bala Datt was pending.

2. The Court below has disallowed the application on the sole ground that as Jamna Datt did not take possession in execution of his decree through the Court, the opposite party is not entitled to restitution under Section 144 of the Code of Civil Procedure. The attention of the lower Court was clearly not drawn to a decision of this Court which was also followed by the Calcutta High Court, *Sheodihal Sahu v. Banwari* 29 A. 348 : 4 A.L.J. 188 : A.W.N. (1907) 90. It is obvious that under the terms of Section 144, where a decree-holder under a decree gets possession of the property decreed to him otherwise than by executing the decree but under colour thereof and that decree is set aside on appeal, the opposite party is clearly entitled to be replaced in possession.

3. It is argued before us on behalf of Jamna Datt that as he was in joint possession before the partition suit, so the parties should be placed in joint possession now. It is obvious that this cannot be done. He has given up his joint possession and taken exclusive possession of the part of the house which was given to him under the decree. Under the final decision of the case he is no longer entitled either to joint possession of the whole or to exclusive possession of a part. He has no title whatsoever and we think it is the duty of the Court to place the decree holder in exclusive possession of the lower part of the house and to remove Jamna Datt therefrom. We, therefore, allow the appeal and set aside the order of the Court below. We remand the case to the lower Court with directions to re-admit it and to proceed to place the appellant Surya Dutt in possession of the lower part of the house by removing therefrom the respondent Jamna Datt. The appellant will have

his costs in both Courts.

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