

Bachcha and ors. Vs. Shiam Lal

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Court : Allahabad

Decided On : Jan-16-1915

Reported in : AIR1915All87; 28Ind.Cas.622

Judge : Henry Richards, C.J. and; P.C. Banerji, J.

Appellant : Bachcha and ors.

Respondent : Shiam Lal

Judgement :

1. This appeal arises out of a suit in which the plaintiffs claimed that they were the Muhammadan residents of a hamlet known as Rasulabad and that they had a right to place, their tazias on a particular platform in front of the house once owned by one Mohan. It appears that for many years the Mussulman population and the Hindus had a perfectly friendly arrangement as to where the tazias should be placed and that by mutual consent the tazias were placed on the platform referred to in the plaint. This land has now become the land of the Government. Close by a Hindu temple has been built. There is nothing whatever to show that the building of this temple was in any way a hostile act on the part of the Hindus. A new place was agreed to by the majority of the residents as to where the tazias should be placed. But the change seems to have been objected to by a few persons. They seem to have called to their assistance the Mussulman residents of other neighbouring villages, who had nothing to do with, the hamlet. Both the Courts below have found that the arrangement about the tazias was an arrangement

come to by mutual consent, in our opinion an arrangement of this kind founded on mutual consent could never become an absolute right and that the case, therefore, is not governed by the ruling in *Mamman v. Kuar* Sen 16 A. 178 : A.W.N. (1894) 12. We are bound in second, appeal by all findings of fact. Abdul Samad, appellant, who has appeared and argued the case on the point says that the Munsif made a mistake in thinking that he had ever stated in his deposition that he had got the permission from Mohan. It may be that Abdul Samad did not ask the permission of Mohan, but it is nevertheless a finding of the Court that what was done was done by mutual consent of all parties. The plaintiffs, therefore, have no legal right which they are entitled to enforce. We think it a very great pity that the inhabitants of this village should not live amicably together as they used to do in the past. We think that if there had been a little good temper displayed, there would be no quarrel between the residents. We hope also that in future the good relations which previously existed may be restored. We see no reason to differ from the view taken by the learned Judge of this Court and we dismiss the appeal. This now finally decides the question between the parties, and we direct that each party to pay their own costs of this appeal.