

Town Area Mandha Vs. Mt. Manglo

Town Area Mandha Vs. Mt. Manglo

SooperKanoon Citation : sooperkanoon.com/475013

Court : Allahabad

Decided On : Apr-11-1933

Reported in : AIR1933All592; 147Ind.Cas.873

Appellant : Town Area Mandha

Respondent : Mt. Manglo

Judgement :

Mukerji, J.

1. This is an appeal against an order remanding a suit for decision on the merits. It was passed under the following circumstances: The Town Area of Moudaha in the district of Hamipur found that one Munna had built a shop without permission of the Town Area Committee and prosecuted him and subsequently served on him a notice to demolish the building. Thereupon his wife, Mt. Manglo, instituted the suit out of which this appeal has arisen to obtain a declaration that the shop was her property having been sold to her in lieu of her dower as early as 1928 and that the shop was not liable to be demolished because it had been constructed before the sections which authorise the Town Area Committee to demolish unauthorised buildings came into force.

2. One of the pleas taken in defence was that the suit was not maintainable in a civil Court. That plea found favour with the learned Munsif and he dismissed the suit without going into the other questions raised in the case. The learned

Subordinate Judge to whom an appeal was taken by Mt. Manglo set aside the decree of dismissal and remarked that the question could not be decided without certain further findings of fact, namely, whether the shop stood within the limits of the Town Area and whether it had been built before certain sections of the Municipalities Act, were made unforceable within the Maudaha Town Area. It is against this order of remand that the Town Area has filed this' appeal.

3. The learned Counsel for the appellant has relied strongly on a decision of this Court in Sheo Ram v. Sone Lal : AIR1929 All912 ,and he contends that the decision of the first Court was right. The argument on behalf of the Town Area is that it was open to the respondent to file an appeal against an order passed against her husband and she not. having appealed was not entitled to maintain the suit.

4. The facts of the case cited before me by the learned Counsel for the appellant were briefly these: A certain person obtained a sanction to construct a building. Another person was aggrieved by that order because he thought that the building would narrow a road. This person appealed to the District Magistrate on the ground that the sanction to build should not have been granted. He succeeded and thereupon the person who had obtained the sanction to build instituted the suit which came up before this Court. For obvious reasons the plaintiff in the suit was bound by the order passed by the District Magistrate as the appellate authority and he could not maintain the suit. In this case the plaintiff was not served with any notice. It is said that being the wife of Munna, the person who had been served with notice, it must be presumed that she had an information of the service of notice. There is no such presumption. The fact' that the plaintiff was aware must be proved. Then again the plaintiff was not bound to appeal even if she was permitted to appeal under Section 318, Municipalities Act. The Town Area Committee never dealt with her and if her title was good she was entirely neglected. We know how the husband uses the wife's property in this country and if the husband passes for the ostensible owner, his acts cannot bind the wife unless a plea of estoppel can be successfully urged against her. In my opinion, the case quoted has no application to the case before me.

5. The plaintiff not being a party to the proceedings before the Town Area Committee and before the appellate authority is, in my opinion, entitled to maintain the suit. If the Town Area-admits her title it would be open to it to issue fresh notices against her if it is so advised. But I do not see anything in the law which can make the notices or orders passed against the husband binding on the wife, simply because she is the wife. The question of title and all other relevant questions must be decided. The appeal is dismissed with costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com