

Dwarka and ors. Vs. Rampat and ors.

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SooperKanoon Citation : sooperkanoon.com/477595

Court : Allahabad

Decided On : May-08-1914

Reported in : 24Ind.Cas.235

Judge : Henry Richards, C.J. and ;Tudball, J.

Appellant : Dwarka and ors.

Respondent : Rampat and ors.

Judgement :

1. The first point taken in this Letters Patent Appeal is that the decree of the Court below which was affirmed by this Court is not a decree for partition. In our opinion the decree can be read as a preliminary decree for partition. It was so interpreted by the learned Judge of this Court and we have not the least doubt when the case goes back to the Court below it will act accordingly.

2. The next point argued was that amongst the items of property there is an occupancy holding and that under Section 32 of the Tenancy Act no suit can be brought for the division of an occupancy holding. This matter is, in our opinion, also covered by the judgment of the learned Judge of this Court. There can be no doubt that a suit for partition of property can be brought even if the family property includes an occupancy holding. It does not at all follow that the Court must necessarily sub-divide the holding in contravention of the provisions of the Tenancy Act. The Court can either give the occupancy holding to one party taking

from that party an equivalent in value. If it be found impossible to do this, the Court can leave the occupancy holding undivided, merely making a declaration that the parties are entitled jointly to the holding. In our opinion there is no force whatever in the appeal, which is accordingly dismissed with costs.

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