

Musammat Jan Bibi and ors. Vs. Musammat Batulan Bibi and anr.

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SooperKanoon Citation : sooperkanoon.com/477692

Court : Allahabad

Decided On : Jul-04-1923

Reported in : AIR1924All729; 78Ind.Cas.214

Judge : Daniells, J.

Appellant : Musammat Jan Bibi and ors.

Respondent : Musammat Batulan Bibi and anr.

Judgement :

Daniells, J.

1. This was a suit by the plaintiffs-appellants, Musammat Jan Bibi and others, for possession of their shares of a house by partition. The finding of the Court below is that defendant Batulan Bibi is in lawful and peaceful possession of the house in lieu of her unpaid dower and that the plaintiffs cannot obtain possession without satisfying her dower. The main plea on which the plaintiffs attack this finding is based on an ambiguity in the judgment of the Court below. The learned Judge of the Court below finds in the earlier part of his judgment that Musammat Batulan Bibi is undoubtedly- in possession of the house. Further on he says:

I have been shown no ruling which requires that the possession of the house on the part of the widow must be exclusive. All that appears to be necessary is to show that she is in actual possession and that there has been no division between

her and any other person.

2. This is not a clear finding, and the sentence in question may mean one of two things. It may mean either that Musammat Batulan Bib) and the other heirs of the family were in actual joint possession of the bouse, in which case the decree of the Court below would be clearly incorrect; or it may merely mean that Musammat Batulan is not in possession adversely to the other heirs. The former meaning would be to some extent inconsistent with what the learned Judge has said above and I have examined the evidence to find out what the learned Judge's finding meant. I find that Musmamat Batulan and her husband gave clear evidence that they were in exclusive possession of the house. They were not' cross-examined on the point and there is no evidence to the contrary to be found on the record. The plaintiffs admitted in para. 8 of their plaint that they were out of possession at the time' when the suit was instituted. It is, therefore, clear that the learned Judge could not have meant that Musammat Batulan was not in sole possession of the house and his decree cannot be attacked on this ground.

3. The second and remaining plea which has been urged is that the plaintiffs should only have been required to pay up a proportionate share of the dower. No authority has been quoted in support of this proposition and, so far as I know, the authority of all the commentators is against it. If the widow is in possession in lieu of dower she is not liable to piece-meal suits by every separate heir. She is entitled to retain the entire property until the entire dower is satisfied. The decree of the Court below is, therefore, correct and I dismiss the appeal with costs including in this Court fees on the higher scale.