

F.S. Old Vs. J.A. Shail

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Court : Allahabad

Decided On : May-12-1915

Reported in : AIR1915All251; 29Ind.Cas.437

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

Appellant : F.S. Old

Respondent : J.A. Shail

Judgement :

1. This appeal arises out of a suit in which the plaintiff claims possession of a house at Mussoorie, called 'Oak Bush.' The Courts below have given the plaintiff a decree. The defendant appeals. In the plaint the plaintiff alleges that the defendant was his tenant during the season of 1913 either from month to month or for the season, and that on the 14th of October 1913 he gave him notice to vacate the house on the 31st of October 1913 as the tenancy would expire on that date. The suit was instituted on the 19th of November 1913. It is said that the defendant had a lease from the plaintiff's predecessor-in-title covering this very period, that this document could not be given in evidence because it was unregistered; the defendant is said to have another lease which will entitle him to possession of the house from the 1st of January 1915. It seems to us that the defendant must be deemed to have been at least a tenant for the season. Having regard to the way in which the rent is paid, it is quite clear that he was not a tenant from month to month. If the defendant was tenant for the 'season,' he could only be put out at the

end of the season of 1913, and it lay upon the plaintiff to prove by clear evidence that the 'season' at Mussoorie terminated on the 31st of October. It is quite clear that the plaintiff never proved that the season terminated on the 31st of October. We are not, of course, called on to decide questions of fact, but it seems to us that the 'season' would ordinarily continue to the end of the year, and we think that this ought to be the assumption in the absence of evidence to the contrary. If the 'season' did not terminate before the 19th of November 1913, then the suit was premature. It is contended on behalf of the respondent that this ground was not taken in the written statement. The defendant pleaded that the plaintiff could not terminate his tenancy at the time he alleged and, in our opinion, this clearly cast the onus on the plaintiff of proving such facts as entitled him to possession of the house on the date on which the suit was brought. We allow the appeal, set aside the decrees of both the Courts below and dismiss the plaintiff's suit with costs in all Courts. Costs in this Court will include fees on the higher scale.

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