

Shera Vs. Hait Ram and ors.

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SooperKanoon Citation : sooperkanoon.com/478965

Court : Allahabad

Decided On : Nov-22-1926

Reported in : AIR1927All756

Appellant : Shera

Respondent : Hait Ram and ors.

Judgement :

Iqbal Ahmad, J.

1. This is a defendant's appeal and arises out of a suit brought by the plaintiffs-respondents for a declaration that the plaintiffs are the owners of plot No. 904 of village Shahpur. The plaintiffs are admittedly in possession of the said plot. The defendant filed a suit for ejectment against the plaintiffs in the revenue Court on the allegation that the plaintiffs were the non-occupancy tenants of the said plot, and on the plaintiffs raising a plea to the effect that they were in proprietary possession of the plot, they were required to have their title established from the civil Court and hence the suit.

2. The defence to the suit was that the plaintiffs were in possession of the plot in dispute as non-occupancy tenants on behalf of the defendant and that the suit was barred by Section 233(k), Land Revenue Act.

3. Neither of the Courts have recorded a finding on the question as to whether or not the plaintiffs are the proprietors of the plot in dispute. The trial Court held that the suit was barred by Section 233(k), Land Revenue Act, and on that finding dismissed the suit. The lower appellate Court has held that Section 233(k), Land Revenue Act, did not constitute a bar to the present claim of the plaintiffs. In my opinion the lower appellate Court was right in so holding. On the findings arrived at by the lower appellate Court, it is abundantly clear that the plaintiffs were not party to the partition proceedings in the course of which the plot in dispute was allotted to the defendant. Not being parties to the partition proceedings the plaintiffs are not bound by those proceedings. The matter is concluded by the Full Bench decision in Shambhu Singh v. Daljit Singh [1916] 38 All, 243.

4. The learned Counsel for the appellant has relied on the case of Tirbeni Sahai v. Jagannath [1908] 5 A.L.J. 725, and the case of Bijai Misir v. Kali Prasad Misir [1917] 39 All. 469. Those cases are distinguishable on the simple ground that the plaintiffs to the suits, giving rise to those appeals were parties to the partition proceedings, and as such were bound by the partition effected by the revenue Court. In the present case the suit of the plaintiffs was not barred by the provisions of Section 233(k), Land Revenue Act.

5. But before I can decide this appeal, I must have a finding from the lower appellate Court on the following issue:

Are the plaintiffs proprietors of the plot in dispute

6. The parties will be at liberty to produce fresh evidence. On receipt of the finding the usual ten days will be allowed for filing objections. The lower appellate Court should send the finding to this Court within two months from to-day's date.