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Court : Allahabad

Decided On : May-08-1929

Reported in : AIR1929All691

Appellant : Muhammad Akbar and anr.

Respondent : Syed Alt Sajjad and ors.

Judgement :

Dalal, J.

1. The judgment of the lower appellate Court is very confused, and the trial Court has gone off at a tangent and decided about a matter which was not properly fixed in the issues. The plaintiffs sued for a declaration that they were owners of superior proprietary rights in a certain village known as Peshkashi Bhadi; that their share of such proprietary interest was one-half; that the revenue was Rs. 52-5-0, and that they were entitled to recover Rs. 26-10-6 from the defendants who were inferior proprietors. The defence was that the defendants were such proprietors along with the plaintiffs, and that the plaintiffs were not entitled to recover any money from them because of an arrangement under which the plaintiffs forbore to recover rent from the defendants in this village in pursuance of the defendants forbearing to recover rent from the plaintiffs in another village. The final defence was really one of payment and did not in any way interfere with the plaintiffs' rights. The defendants admitted that the plaintiffs were owners of one-fourth of the

superior proprietor's rights and that they themselves were inferior proprietors of this particular village. The trial Court held that the plaintiffs were owners of one-fourth, and not one-half, of the superior proprietor's rights, and that the defendants also were superior proprietors. Issue 1 was to the following effect:

2. Whether defendants 1 to 8 and 10 are also superior proprietors of the property in suit

3. This issue was answered in the affirmative. The defendants being superior proprietors did not prevent the plaintiffs from being superior proprietors also. There was no issue as to whether the plaintiffs should be deprived of the declaration as to their rights as superior proprietors for any reason. At the end of the judgment the trial Court refused to grant a declaration on the ground of mutual agreement between the parties under which the plaintiff had agreed not to recover their share of the rent from the defendants under-proprietors. I am afraid that I am unable to understand what the lower appellate Court has decided. There is a specific finding in favour of the plaintiffs of the trial Court that the suit is not barred under Arts. 142 and 144, Lim. Act. The lower appellate Court would seem to think that the suit is so barred because the plaintiffs had not recovered rent from the defendants for a long term of years. If there is any such finding it may be disregarded as being based on ignorance and insufficient knowledge of the pleadings of the parties.

4. It was argued on behalf of the appellants that there was no definite finding that the plaintiffs were owners of only one-fourth and not of one-half, and that the only finding was that the defendants were also superior proprietors. No doubt the judgment of the trial Court is not very definite, but I take it that Court has decided to the effect that the plaintiffs are owners of only one-fourth, and not of one-half, of the superior proprietary rights.

5. The second question is whether the plaintiffs may be deprived of the declaration. In my opinion they cannot be so deprived. The question as to whether they could recover rent or not is one for the revenue Court to decide. The civil Court can give only a declaration of title that the plaintiffs are owners of a particular share and entitled to recover certain amount from the defendants. If there is any reason why this amount should be considered to be paid off it is for

the revenue Court to decide whether such a set off is admissible or not. Practically what the defendants plead is a set off, and a set off is not admissible in the revenue Court under the Sch. list 2, serial No. 2, of the Agra Tenancy Act. The plaintiffs, if they failed in this suit, will also be liable to have their names cut out of the registers on the ground that their suit for a declaration of proprietary title had failed. The respondents' learned Counsel argued that the findings were in favour of the plaintiffs. The findings, however, did not count, but only the decree counted and the dismissal of the plaintiffs' suit would deprive them of any share in the superior proprietor's right in this village. In the result I set aside the decrees of both the subordinate Courts and decree the plaintiffs' suit for one-fourth of their rights of superior proprietor with half costs throughout.

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