

Hardial Vs. Alam and ors.

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Court : Allahabad

Decided On : May-14-1923

Reported in : AIR1924All459; 74Ind.Cas.177

Judge : Gokul Prasad, J.

Appellant : Hardial

Respondent : Alam and ors.

Judgement :

Gokul Prasad, J.

1. This is a plaintiff's appeal arising out of a suit for recovery of certain crops, or, in the alternative, the value thereof. The plaintiff's allegation was that he had sown wheat, lahi, and mustard in 4 bighas of alluvial land bearing No. 169, that the defendants Nos. 1 to 9, having colluded with the Patwari, the defendant No. 10, forcibly cut away the crops sown by the plaintiffs about the 20th of March 1941. The defendant No. 10 is the Patwari of the village and was to receive one-tenth of the crops to be appropriated by defendants Nos. 1 to 9. The plaintiff again sowed some wheat, etcetera, on another plot of 7 bighas but the defendants Nos. 1 to 9 in collusion with defendant No. 10 cut and removed the crops. The plaintiff, therefore, brings the suit for recovery of the grain removed by the defendants or Rs. 347 the value thereof.

2. The defence of the defendants Nos. 1 to 9 was that they had been ploughing and sowing the field in question as it emerged from the river every year and had always been reaping the crops, that in the year in dispute they ploughed and sowed it as usual under a lease of Bhadon Sambat 1977 given by Shah Qutubuddin, the lambardar and that the plaintiff had never sowed the field in question nor had he any right to the crops. They also contended that there was no collusion between them and the defendant No. 10.

3. Defendant No. 10 denied any collusion with the other defendants and alleged that the defendants themselves sowed the crops and reaped them.

4. The First Court came to the conclusion that Qutubuddin, the lambardar, had authority to grant the aforesaid lease and the defendants Nos. 1 to 9 did, as a matter of fact, cultivate the plot in dispute. It further found that the plaintiff had no right to institute the suit and that the Patwari was not in collusion with the defendants. It did not decide the question of the value of the crops alleged to have been removed and on these findings dismissed the suit.

5. The plaintiff went up in appeal. The learned Judge of the lower Appellate Court has rightly found that the patta given by Qutubuddin was not for a period of more than a year' and that the rent reserved could not be said to have been more than Rs. 100 in value. The patta, therefore, did neither require stamp nor registration (see, in this connection, Schedule I, Article 35, Exemption A, of the Stamp Act of 1899, also Government Order No. 1048/VII-I-34-I dated the 3rd of December 1885 published in the N.W.P. Gazette of 1885, Part I, page 579). The lambardar has a right to give a lease of zemindari property having regard to the particular season vide the case of Muhammad Kazim v. Miyan Khan 4 A.L.J. 538 : A.W.N (1907) 165 : 29 A. 554. In this case having regard to the words of the patta and specially to the fact that the land gained by alluvion was to be measured later on, this patta could not refer to more than that particular year. There was no certainty that the same land or the same quantity of land would emerge from the river the succeeding year. This patta would not, therefore, be said to be one for more than one year nor could it be said that the rent reserved was more than Rs. 100. This patta by the lambardar was, therefore, valid and the defendants were justified in

cultivating the land. The lease was, therefore, admissible in evidence and required neither a stamp-duty nor registration. These were the only grounds pressed in the appeal. Under these circumstances, it is not necessary to consider the question whether a second appeal lies or not. The appeal, therefore, fails and is dismissed with costs.

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