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Saina Vs. Seth Behari Lal

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Court : Allahabad

Decided On : Apr-05-1922

Reported in : 69Ind.Cas.795

Judge : Stuart, J.

Appellant : Saina

Respondent : Seth Behari Lal

Judgement :

Stuart, J.

1. The plaintiff-respondent is Zemindar of village Lahorikhurd. The plaintiff resides in Muzaffarnagar. His case is that while the village of Lahorikhurd was under the management of a Receiver, the defendant, who is a raiyat in the village, made constructions over land, the property of the plaintiff, which he had no right to use, some 5 or 6 years ago. He sued for the removal of the constructions The defendant's reply was that the constructions had been made 22 years before the date of the suit with the permission of the than Zemindar. The Munsif found that the constructions had been made 5 or 6 years before the date of the suit. An appeal was tiled to the Additional Judge in which the grounds of appeal were that the constructions were more than 12 years old and made with the permission of the Zemindar. The findings of fact were questioned. The Additional Judge found that no permission bad been given by any Zemindar and that the constructions

were 5 or 6 years old. This second appeal has been admitted against those findings on pleas that the defendant is an occupancy tenant, that the constructions were made without objection on the part of the Zemindar, that the land being land in front of the defendant's house, he had a right to make constructions; that the plaintiff was estopped by lapse of time from asking for demolition of the constructions and that the District Judge ought to have granted an application for a local inspection. The first two pleas are new. I cannot find it suggested anywhere in the judgments of the Courts below that the defendant was an occupancy tenant. The argument appears to be that occupancy tenants are at liberty to make constructions in front of their residential houses as they wish, I know no authority for this view. I have decided in previous cases that raiyats in villages, who have acquired rights of user over areas of land adjoining their residential houses to enable them to carry on their lawful sailing's, cannot be restrained in the exercise of such user, but I know no authority for the proposition that an occupancy tenant may make permanent constructions upon the land of the Zemindar over which he has no right of user. He would be debarred, even if he had a right of user, from making permanent constructions, unless the rights to make permanent constructions are included in the right of user.

2. With regard to the next point, the plea of estoppel, it is sufficient to say that there is a finding of fact of the Courts below that the constructions are only 5 or 6 years old. They were clearly made when the Receiver was in charge of the village. There was no acquiescence on the part of the plaintiff and no estoppel tan have arisen,

3. On the last point, there was no necessity for a local inspection and the District Judge was under no obligation to direct one.

4. I dismiss this appeal with costs which will include fees on the higher scale.

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