

Baldeo and ors. Vs. Muloo

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SooperKanoon Citation : sooperkanoon.com/484158

Court : Allahabad

Decided On : Jul-15-1929

Reported in : 119Ind.Cas.8

Judge : Sen, J.

Appellant : Baldeo and ors.

Respondent : Muloo

Judgement :

Sen, J.

1. This is a plaintiffs' appeal arising out of a suit for joint possession of a holding and Rs. 150 as mesne profits. The following genealogical table will elucidate the position of the parties:

LACHIRAM

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Chheda Lal Duli

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| Mulu, son. Musammat Bibi,

| wife.

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Baldeo, Sarupi, Lalta, Musammat

son. son. son. Tursa,

wife.

2. It appears that Lachhi Ram, the common ancestor, was the original tenant of the occupancy holding now in dispute. Upon his death, the holding was jointly cultivated by Chheda Lal and Duli, his two sons. Chheda Lal appears to have left the parent village Agras about the year 1907 and settled in the Rampur State; since then the holding in question remained in the occupation of Duli and his son Mulu.

3. The plaintiffs are the sons of Chheda Lal and the defendants are the son and widow of Mulu.

4. The suit was instituted on the 26th April, 1926. It was resisted mainly on the ground that the plaintiffs' claim was time-barred.

5. The Court of first instance gave the plaintiffs a decree for joint possession and Rs. 53 by way of mesne profits. The lower Appellate Court has reversed the

decision and dismissed the suit. It was admitted by the plaintiffs that they were dispossessed four years before suit. The lower Appellate Court found that the title of the plaintiffs was denied by the defendants 12 years before suit when they sought to recover possession of their ancestral house. The lower Appellate Court has also found that the defendants have been in adverse possession for a period of more than 12 years. There is a clear and categorical finding of the lower Appellate Court that the plaintiffs have been out of possession since the date of their abandonment of their native village and of their settling in Rampur in the year 1907. In view of these findings, it appears that the plaintiffs were either dispossessed or discontinued their possession ever since the year 1907. Article 142 was, therefore clearly applicable. The lower Appellate Court has observed 'when one co-sharer of an occupancy. holding abandons it for considerable time and the holding is kept alive only owing to the effort of the other co-sharer who cultivates the land and pays rent, the former cannot be allowed to recover possession although the period of dispossession is less than 12 years'. It may be extremely difficult to accept or endorse this proposition but it is equally difficult for the plaintiffs to get over the finding that they were either dispossessed or had discontinued possession of the holding in dispute since the year 1907. Under Article 142 of the Indian Limitation Act, therefore, the plaintiffs' claim is clearly time-barred. I dismiss this appeal with costs.