Babu Gulzari Lal Vs. Sheikh Maqbool Ahmad

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Court : Allahabad

Decided On : Jan-17-1921

Reported in : AIR1921All40; 62Ind.Cas.695

Judge : Grimwood Mears, C.J. and ;P.C. Banerji, J.

Appellant : Babu Gulzari Lal

Respondent : Sheikh Maqbool Ahmad

Judgement :

1. This is a lamentable matter. Twenty years ago, in 1901, the defendant obtained a decree against the plaintiff for possession of a share in village Mahrehra. In the decree the defendant's share, instead of being put, as it should have been, at 11 biswas, 7 biswansis and 2 kachwansis, was by mistake entered as 11 biswas, 17 biswansis and 2 kachwansis. In due course the appeal came before the High Court who affirmed the order of the lower Court, and no point was taken in the High Court as to any error in dimension. The defendant, Gulzari Lal, obtained mutation of names and got an entry made in the khewat of the share in the holding as of the exact amount decreed by the Courts. That included the 10 biswansis to which in fact he was not entitled. In the year 1905 a suit for profits was brought by Gulzari Lal against Makbul Ahmad. In that suit be claimed the profits which attached to the extra 10 biswansis. He failed in that suit, and in 1909 an application was made to the High Court to have the mistake corrected and the decree of 8 years before reduced by 10 biswansis. It became clear on the application to the High Court that there bad been a mistake, and the decree was amended, giving to Gulzari Lal 11 biswas, 7 biswansis, 2 kachwanis. It happened that Makbul Ahmad was the Lambardar of the village and at a little later date than this, according to Makbul Ahmad, he obtained formal possession of the share. That was on the 21st of February 1910. By an order of the 25th of July 1910, the Assistant Collector of the Etah District refused Makbul Ahmad's application that the khewat entries should be altered so as to correspond with the decree of the Court. The objections taken were that the biswansi shares were situated in another mohal and a question might also arise as to how many biswansis the 10 biswansis of 1901 then represented. That is, the application appeared to the Assistant Collector of the Etah District to be something more than formal, and he ordered that the matter should be first cleared up by a Civil Court. Now, the position in July 1910 was that Makbul Ahmad obtained a corrected decree. He was also Lambardar of the village and from that date forward he appears to have himself taken the profits which were apportion able to this 10 biswansis share. Therefore, in 1910 although the Assistant Collector had said that he should have the matter cleared up by the Civil Court, Makbul Ahmad did not care to commence proceedings, and he allowed the khewat entry to remain, and it continued to remain in accordance with the incorrect decree of 1901. In 1917 Gulzari Lal thought of another method and he, knowing that

the khewat entry was in accordance with the incorrect decree of 1901, applied for partition on the basis of that khewat entry. The less said about the good faith of an application of that kind the better. There was naturally an objection raised in that matter, and it was pointed out that the khewat entry and the decree in the High Court differed inasmuch as the khewat entries were taken from the original decree in the High Court which had been modified in 1909. The Revenue Court again said that this matter should go to a Civil Court for decision, and thereupon the objector was told that within three months he should institute a case in the proper Court and have this question determined. There was no difficulty about the determination of that question and the learned Additional Judge who tried this matter has given a decree in favour of the plaintiff, and has supplied the name of the mahal which, if it had been supplied 20 years ago, would have saved a good deal of trouble. That decree, however, does not satisfy the defendant and he has now appealed to this Court and has taken the point that this action is barred by limitation, and he says that as soon as he made an attack upon the title of the respondent, it was the respondent's duty within the time limited by Statute to take action. The respondent, however, by way of answer says that although an attack was made on his title in 1910, nevertheless he was at that moment in possession of the rents and profits, and he had behind him the duly corrected decree of the High Court, and with those two facts to support his title there was no need for him to embark on litigation. But in 1917, he says, the position became materially different, because then there was by the partition suit an entirely disconnected fresh attack upon him--which was an attack upon title so far as this 10-biswansis share went, and that unconnected fresh attack did give him the right to bring this matter up for decision. We think that he is right about that, and by the partition suit he did get a fresh cause of action which could not be said to be in any way a continuation of the original cause of action, and that the two matters, that of 1910 and of 1917, are separate and distinct. That seems to us to be the distinction between this case and the case of Akbar Khan v. Turaban 1 Ind. Cas. 557 : 31 A. 9 : 5 A.L.J. 637 : A.W.N. (1908) 252 : 4 M.L.T. 444. We had brought to our attention the case of Allah Jilai v. Umrao Hussain 24 Ind. Cas. 535 : 36 A. 492 : 12 A.L.J. 810. We are of opinion that the principle that should govern us in this case is the one laid down in the case last mentioned. That being so, this is an appeal which has no merits in fact or in law, and is an appeal which must be dismissed with costs and fees on the higher scale.