

(1920) 01 AHC CK 0001

Allahabad High Court

Case No: None

Jamna

APPELLANT

Vs

Jhalli

RESPONDENT

Date of Decision: Jan. 4, 1920

Citation: AIR 1920 All 111 : 55 Ind. Cas. 94

Hon'ble Judges: Lindsay, J

Bench: Single Bench

Judgement

1. This appeal arises out of a suit for possession of five plots of land, Nos. 567, 557, 558, 561 and 1046, measuring 9-44 acres, situated in a village called Sunair, The lands are comprised in an area known as Khata No. 3, the total extent of which is 63 acres.

2. The village lands are admittedly undivided and the tenure is Bhayachara.

3. The plaintiff sued on the strength of a sale-deed, executed in her favour on the 10th May 1915 by two persons Pajjan and Chaturi, who according to the evidence are co sharers in the Khata to the extent of 3/4ths. The sale purported to be a sale of the entire plots in dispute, and the plaintiff alleges that her attempt to take possession of these specific lands was resisted by the defendant-respondent Jhalli. She pleads this fact as constituting a cause of action for her suit to recover actual and exclusive possession. Coupled with the claim for possession was a claim for Rs. 50 damages. The defence was that the lands in dispute were the Khudkasht of the defendant, who is owner by purchase of a 1/4th share in the Khata: consequently it was pleaded that the plaintiff had no right to possession as against him. The first Court decreed the claim in part. The Munsif held that Nos. 1046 and 567 were the sir of the plaintiff's vendors at the time of the sale and that the defendant's occupation of these lands was that of a sub tenant. He thought the plaintiff was entitled to possession of these two plots. As to the remaining three plots his finding was that the defendant held them as Khudkasht and that plaintiff could not claim to eject him.

4. Both parties appealed and the District Judge remanded an issue for trial to the first Court for the purpose of ascertaining whether the plaintiff's vendors had any right to sell these specific plots. The Munsif was of opinion that they had the right to sell the two plots which were their sir, namely, Nos. 1046 and 537. The learned Judge was of a different opinion and in the result dismissed the plaintiff's claim into.

5. He pointed out that the plaintiff's vendors were co sharers to the extent of 3/4ths in a Khata which is admittedly joint Zemindari property and held that without the consent of the remaining co-owner (i.e., the defendant Jhalli) they could not transfer an exclusive title to particular portions of property as yet undivided.

6. The vendors, the Judge remarks, did not affect to transfer their undivided share or a portion of it. What they did was to earmark certain plots and transfer them as if they were the exclusive owners of them. The judgment of the lower Court is attacked here on various grounds, but it seems to me that there is no answer to the reasoning of the learned Judge.

7. The plaintiff can only recover possession by proving her exclusive title to the plots in dispute. She cannot do this, for her own vendors had no such title. The property is undivided and although the co-sharers may, by arrangement among themselves, take possession of definite portions of the joint property and hold them so as to enjoy their proper quota of the profits of the joint property, it is not permissible for one co sharer so in separate possession to alienate to a third person, as his own exclusive property, the portion which he has been occupying by agreement with his co-owners. Till partition takes place no co-sharer is entitled to say that he has an exclusive right to any particular portion of the joint property and to confer an exclusive right on a third party by alienation without the consent of all the co owners. It is not pretended now that the defendant-respondent gave his consent to the sale in favour of the plaintiff.

8. The Judge was, in my opinion, right in holding that in the circumstances the plaintiff's claim to possession failed. This finding disposes of this appeal, which I dismiss with costs.