

(1913) 03 AHC CK 0010**Allahabad High Court****Case No:** None

Jamna Prasad Raut

APPELLANT

Vs

Raghunath Prasad and Others

RESPONDENT

Date of Decision: March 11, 1913**Citation:** (1913) ILR (All) 307**Hon'ble Judges:** Tadball, J; Muhammad Rafiq, J**Bench:** Division Bench**Final Decision:** Dismissed

Judgement

Tudball and Muhammad Rafiq, JJ.

The appellant is a judgment-debtor whose house in a certain village has been attached in the execution of a simple money decree. Two portions of the same house have already been attached and sold, and the remainder, which is described as a six anna share, has now been attached. The judgment-debtor came forward and objected that he was an agriculturist and therefore his house was exempt from attachment and sale. The court below has decided that the house is not occupied by him as an agriculturist and is therefore not exempt from sale. He has come here on appeal. The question is whether or not he has produced evidence to show that he is an agriculturist and occupied the house as such. The appellant was formerly the zamindar of the village, but his interest as such has been sold and he now holds his sir land as an exproprietary holding. He lives in another village and holds zamindari in several villages. He has produced two witnesses who state that his cattle and implements are kept in the house in dispute. The appellant being both a zamindar and a cultivator of land, the question arises as to what is his main source of income and whether or not he is an agriculturist within the strict sense of the term and occupies the house as such. The burden of proof lay on him, and it was for him to show to the court that his main source of income was cultivation and not zamindari and that he was in the strict sense of the term an agriculturist. He produced two witnesses, and in our opinion their evidence is not sufficient to prove that his main

source of income is agriculture and that he is an agriculturist within the strict sense of the term. As a matter of fact in the past he held considerable zamindari, though he has lost some of it by reason of decrees obtained against him. In this case it has not been satisfactorily proved that he is an agriculturist within the strict meaning of the term. The appeal fails and is dismissed with costs.