

(1930) 01 AHC CK 0026**Allahabad High Court****Case No:** None

Chiraunji Lal

APPELLANT

Vs

Ishwar Das

RESPONDENT

Date of Decision: Jan. 19, 1930**Hon'ble Judges:** Bennet, J**Bench:** Single Bench**Final Decision:** Dismissed**Judgement**

Bennet, J.

This is a Letters Patent appeal brought by the defendant Chiraunji Lal against a decree of a learned single Judge of this Court, awarding the plaintiff a decree for possession of a grove. The suit was dismissed by the two lower Courts. The facts are as follows: One Mr. Gardner was the sole owner of the zamindari rights in a certain village, and in 1904 Ishwar Das, the plaintiff, bought a grove from Mr. Gardner. That sale deed clearly sets forth that Mr. Gardner was the owner in possession of that grove, and he sold the rights of ownership of the grove to Ishwar Das. Prior to this sale, on 9th October 1882, Mr. Gardner had executed a simple mortgage of his zamindari rights in this village. The sale deed of 1904 was therefore subject to this mortgage. In 1910 Baldeo Prasad, the mortgagee, brought a suit for sale on his simple mortgage to which he made Ishwar Das, the present plaintiff, a defendant, as he was the owner of this specific plot comprising this grove. A preliminary decree was passed on the 5th April 1911. In that decree there is a statement that the occupancy rights of Ishwar Das in the area sought to be sold shall not be affected by the sale. It has been argued that this exemption refers to the rights of Ishwar Das in the grove in question. There is no evidence at all to support such an argument. There is nothing to show that the occupancy rights which were exempted were not the occupancy rights of Ishwar Das in some tenancy holding in that village. It is clear that the rights which Ishwar Das had purchased in 1904 could not by any correct use of language be described as occupancy rights, and moreover if the reference was to the grove by an inaccurate use of language, we would expect that the exemption

would have stated that the occupancy rights in the grove were to be exempted.

2. The next point which is to be noted is that in the final decree dated 7th September 1912 this exemption clause finds no place. Subsequently there was a sale on this decree, and the defendant Chiraunji Lal, the appellant before us, bought the village at an auction-sale on 20th April 1920 and the sale was confirmed and formal possession was delivered to Chiraunji Lal on 4th August 1921, and mutation was affected in his name. No objection under Order 21. Rule 90 was made by Ishwar Das, and accordingly a suit would be barred. It is difficult to see on what ground the present claim of Ishwar Dass could be maintained. As the final decree contained no exemption of the grove even a subsequent correction of that decree would not affect the validity of the sale: see [Agha Husain and Others Vs. Qasim Ali](#) and [Pirthi Nath and Another Vs. Mt. Kunji Kunwar and Another](#), We consider, therefore, that the claim of the plaintiff fails because it is not shown that the exemption in the preliminary decree applied to this grove, secondly because there was no exemption in the final decree, and thirdly because his remedy would not lie in a suit.

3. It was argued that, as alleged in para 2 of the plaint, from 1898 the plaintiff had the rights of a groveholder, and that subsequently in 1904 he acquired the rights of a proprietor in this grove. There is no evidence whatever on the record which would enable any Court to come to a finding that prior to 1904 the plaintiff had any rights in this grove. Farther, if he had possessed any such rights, they would be merged with the proprietary rights, transferred in 1904. And the language of the sale deed of 1904 clearly states that Mr. Gardner was the owner in possession of the grove and this language is inconsistent with the plea that the plaintiff possessed any right of a grove-holder prior to 1904.

4. For these reasons we allow this appeal and dismiss the suit of the plaintiff with costs in all Courts.