

AIR 1934 All 312

Allahabad High Court

Case No: None

Man Singh

APPELLANT

Vs

Jagat Narain and
AnotherRESPONDENT

Date of Decision: Oct. 24, 1933**Acts Referred:**

- Agra Tenancy Act, 1926 - Section 196

Citation: AIR 1934 All 312**Hon'ble Judges:** Mukerji, J**Bench:** Division Bench**Final Decision:** Allowed

Judgement

Mukerji, J.

This appeal is on behalf of one of the plaintiffs and arises out of a suit instituted in the Revenue Court for the ejectment of the first three defendants.

2. The allegation in the plaint was that defendants 1 and 2 held the land in suit with trees thereon as grove-holders but in contravention of the purpose for which the land was let out to them, they allowed defendant 3 to erect a building on the land.

3. The defence was manifold, but the principal points were taken that defendants 1 and 2 were proprietors of the land having purchased it at an auction-sale; that they erected several buildings thereon; that under a custom they were entitled to. erect buildings and that the suit was barred by limitation, inasmuch as the building complained of had existed for fifteen months prior to the institution of the suit.

4. The learned Assistant Collector inspected the locality, examined witnesses and came to the conclusion that the building was of a standing of less than one year and decreed the claim in respect of the site of the house alone. The defendants appealed and there was a cross-objection. The appeal was allowed, and the cross-objection was dismissed.

The learned District Judge held that defendants land 2, being grove-holders, were entitled to erect buildings on any portion of the site of the grove, which had become vacant and that the building could stand till the whole of the site of the grove became vacant and the rights of the grove-holders ceased, to exist. Before the lower appellate Court the plea that the defendants were proprietors of the land, was abandoned and was not even taken in the grounds of appeal,

5. The learned Judge in the Court below did not consider the plea of limitation and the plea that by a custom the defendants were entitled to build, although both the points were taken in the memorandum of appeal. One of the plaintiffs has come as the appellant and the other plaintiff has been made a pro forma respondent. It has been argued that defendants 1. and 2 are grove-holders within the meaning of Section 196, Tenancy Act of 1926, and that being so, they are in a position of non-occupancy tenants and are subject, to the provisions of Section 84 of said Act. This argument, which has been shortly stated, is well founded. The expression "grove-holders" is defined in Section 196, Tonanuy Act, of 1926 as:

a person to whom land has been lot or granted by a landlord...for the purpose of planting a grove....

6. Defendants 1 and 2 cannot be anything but grove-holders. They sot up the plea of ownership, but that plea was not substantiated. If defendants 1 and 2, be grove-holders, then they would be occupancy tenants whose lease would expire when the land ceased to be a grove land. The learned Counsel for the respondent argues that on account of the custom, which has been set up and on which no finding has been arrived at the grove-holder will not be an occupancy tenant. Supposing for the moment that there is a custom by which a grove-holder is entitled to build on the site left vacant by a dead tree, how can it be said that the grove-holder holds under the title other then the title of any non-occupancy tenant conferred on him by Section 197, Clause (a)? The original holding is under a title which permitted a grove-holder to plant trees. It is not alleged that the original grant carried with it a right to erect a building. If that had been the the case, the lease would have been a building lease and not a lease to plant a grove. On the finding of the first Court which has been acquiesced in by the respondents the position of the respondents is that of grove, holders and no better.

7. The purpose for which the land has; been let to the defendants is the purpose of planting a grove. That being so, the erection of a building is clearly an act detrimental to the purpose for which the land has been let within the meaning of Section 84, Sub-section (1), Clause (a), Tenancy Act. The result is that the defendants have laid themselves open to be ejected either from the entire grove land or at least from a part of it, unless the Court chooses to grant compensation and impose conditions in accordance with Section 85, Tenancy Act. The learned Counsel for the respondents has argued that two issues should be remitted to the Court below, one as to limitation and the other as to custom. The question of limitation has not been considered by the Court below, and there is nothing to

indicate that it was definitely given up. As regards the question of custom it is inconsistent with the nature of the tenure of the grove-holder. As I have said, it is not the defendants' case that the original lease was a building lease. The plea of custom therefore must be brushed aside. If it had been necessary to do so, I would have decided it on the material that is before me, although the Court below has not expressed any opinion on it. Besides the question of limitation, it is necessary to obtain from the Court below an expression of its opinion as to what compensation may be allowed to the plaintiffs if this Court decided that in the circumstances of this case an award of compensation and an award of costs would be the proper remedy.

8. It has been alleged that certain old buildings stand on the land, namely, a temple and certain houses, besides the one complained of. For the purpose of deciding the question of limitation the ages of the older buildings will have to be ascertained as also of the building complained of, because, if the building complained of is less than one year old, the plaintiffs will be entitled to their remedy, although any claim based on the older buildings might be barred by time. I remit the following issues to the Court below for trial : (1) Whether the suit is barred by time? (2) In case the compensation be deemed to be a fair remedy to be granted by this Court, what would be the amount awardable to the plaintiff? (For the purpose of ascertaining the amount of compensation the Court will take into its consideration the area of the land covered by the buildings complained of.)

9. On issue No. 2 alone parties will be entitled to adduce evidence. Two months are allowed for returning the findings, and ten days will be allowed to file objections.