

**(1879) 11 AHC CK 0003**

**Allahabad High Court**

**Case No:** Second Appeal No. 117 of 1879

Harbhaj and Others

APPELLANT

Vs

Gumani and Another

RESPONDENT

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**Date of Decision:** Nov. 18, 1879

**Final Decision:** Dismissed

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### **Judgement**

Sir Robert Stuart, Kt., C.J. and Robert Spankie, J.

The plaintiffs, appellants, asserted that Amir Chand and Sarhu, some thirty-two years ago, made over their zamindari share and a house in trust to Ramjas, the father of defendants, on condition that when they or their children returned to the village they would be allowed to re-occupy their lands: Ramjas and his successors had all along remained in possession as trustees, and had admitted the trust when the settlement papers were last revised: the plaintiffs returned in 1934 Sambat, and are heirs of Amin Chand and Sarhu, but defendants refused to surrender the share. The defendants deny that any land or house was made over to Ramjas in trust by Amin Chand and Sarhu: Ramjas and they (defendants) have held the property adversely to plaintiffs for forty years, and the suit was barred by limitation: Amin Chand and Sarhu owed nearly Rs. 600 to defendants, they broke down and could not pay the Government revenue: Ramjas held possession for eight years and paid it: when he asked Amin Chand and Sarhu to pay him their debt they left the village, and since then the possession of Ramjas and defendants has been adverse. The Munsif decreed the claim for the land and dismissed it for the house. He held that the administration-paper provided for re-entry. The Judge in appeal has reversed the Munsif's decree, holding that there was no satisfactory proof that Sarhu and Amin Chand intrusted their property to defendant's father Ramjas: parol evidence after such a time was not good for anything, and the administration-paper was not a proof of the trust: it recites that absentees or their descendants may on their return reenter on their lands: the community assented to this, but any one could recall his consent: the entry is no proof that any one in possession of the share of an absentee held it as a trustee: the possession of the defendants was shown to have

been adverse, and to have been so far at least twenty years. We are not disposed to interfere. The finding as to the adverse character of the possession of defendants is one of fact. A village administration-paper does not necessarily constitute a valid trust. It might be evidence of a trust, but in this case, as regards the share in dispute, the persons entered as "absent shareholders" were neither present in the village when the settlement was in progress, nor were they assenting parties to the arrangement recorded in the administration-paper. The arrangement as to the re-entry of an absentee was made amongst the co-sharers present in the village; possibly the main object in making it was to secure peaceable possession to those in occupation of the shares of absentees. In this administration-paper there is also a proviso that no owner who is a defaulter as regards Government revenue will be readmitted until he pays up the arrears due by him. If an administration-paper containing a clause such as that before us is to be regarded as constituting a trust, it would appear to be a trust created by the shareholders of the estate, ostensibly for the benefit of absentees, though the latter really derive no present benefit from their land remaining in the possession of the shareholders in the estate, whereas the shareholders are at once benefited by taking up the shares of the absentees which they may possibly be never called upon to surrender without, as in this case, the institution of a suit. Moreover, the arrangement may be one which the shareholders actually present when it is made may afterwards, if they please, revoke, or omit to record in a future settlement. However this may be, it is sufficient in this case to say that the Judge has not acted erroneously in refusing to accept the administration-paper as conclusive evidence of a trust, and we must not overlook the nature of this claim as stated in the plaint. The claim of the plaintiffs was that thirty-two years ago Amin Chand and Sarhu made over their share in trust to Ramjas, so that it is not pretended that the trust was raised by the administration-paper; that paper is relied on as evidence of the trust, and an admission by the parties who signed it that there was a trust. But there is no such admission of any actual trust as that set up by the plaintiffs. There was a long list of absentees, and amongst them are the plaintiffs, as sons of Amin Chand and Sarhu. The declaration is general that any absconding parties returning to and settling in the village shall immediately be put in possession: the occupants shall not object to relinquish their holdings. There is no declaration of any pre-existing trust as between the absentees and the occupants of their shares individually. We accept the finding of the lower Appellate Court on the matter of fact that there is no evidence to establish the claim that Amin Chand and Sarhu personally intrusted their shares to Ramjas thirty-two years ago. The present appeal is, therefore, dismissed with costs.