

**(1923) 12 AHC CK 0019****Allahabad High Court****Case No:** None

Gupta Nand Bharthi

APPELLANT

Vs

Hari Shanker and Another

RESPONDENT

**Date of Decision:** Dec. 11, 1923**Hon'ble Judges:** Sulaiman, J**Bench:** Single Bench**Final Decision:** Dismissed**Judgement**

Sulaiman, J.

This second appeal arises out of a suit brought for possession of the site of a house by removal of the materials standing thereon. The main question in the case was one of fact whether the plaintiffs were or were not the owners of the land. Both the Courts below have decreed the claim holding that the plaintiffs' title is fully established. The lower appellate Court has found as follows : "From the voluminous documentary evidence referred to in the judgment of the lower Court it was conclusively proved that Plaintiff No. 1, who is Respondent No. 1, was the purchaser of all the rights of the appellant in Sarai Goshain, a Mohalla in which the house in dispute was situated and the Plaintiff No. 2 was the auction-purchaser of the rights of the other zemindar Tikam Bharti in this house and, therefore, neither the appellant nor the other zemindar had any right left in themselves in respect of the site or the materials." It is contended on behalf of the defendant-appellant that the Court below has drawn wrong inference from the documentary evidence on the record. The Court of first instance had set forth the documentary evidence in detail and showed that the house in dispute was mentioned as Item No. 17 in the sale certificate which was granted after an execution sale on the basis of a simple money decree in 1916. It also referred to a number of other documents showing that the entire title had passed to the plaintiffs and nothing had remained with the defendants. It is, however, contended, on behalf of the appellant that, when a number of documents have to be construed the question as to what proper inference can be drawn from them is one of law and not of fact and can, therefore,

be gone into in second appeal. Reliance is also placed on the case of [Matbar Singh Vs. Ranbaz Singh and Others](#), and it is urged that in that case the learned Judges went into whole of the evidence on the ground that the findings, which were apparently those of fact were not based on evidence, but upon evidence which had been misread or misunderstood. It may be possible to distinguish that case on the ground that the question of fact raised in that second appeal was one which had nowhere been put up as a plea in the written statement. That was a circumstance which very probably influenced the learned Judges in going through the evidence once again. However that may be, I am bound by the recent pronouncement of their Lordships of the Privy Council in the case of The Midnapur Zemindary Co. Ltd. v. Uma Charan Mandal AIR 1923 P.C. 187, where it was laid down that, "where documents admitted in evidence upon that question are really historical materials, and although they have to be construed, and if possible understood, they are not to be treated as involving issues of law merely because they have to be construed. It is not as though they were being construed as instruments of title, or where contracts or statutes or otherwise the direct foundation of rights." It cannot be suggested that the sale certificate referred to by the Court of first instance which expressly contains a recital that the house now in dispute was sold, has in any way been misconstrued. The learned Vakil for the appellant also is not able to show which of the particular documents referred to by the first Court has been wrongly interpreted. The question really is not one of misinterpretation of any document or documents of title but one of inference of fact from voluminous documentary evidence. I am therefore of opinion that the question, being one primarily of fact, cannot be challenged in second appeal. The appeal is without force and is hereby dismissed.