

Jagannath Prasad Vs Badri Prasad and Others

None

Court: Allahabad High Court

Date of Decision: Sept. 1, 1911

Citation: (1912) ILR (All) 113

Hon'ble Judges: H.G. Richards, C.J; Banerji, J

Bench: Division Bench

Final Decision: Allowed

Judgement

H.G. Richards, C.J. and Banerji, J.

This appeal arises out of a suit in which the plaintiff claimed a declaration that he was entitled to

continue in possession of a plot of land in the abadi and that the defendants had no right to interfere with his building a wall. The court of first

instance decreed the suit. The lower appellate court affirmed that decree. On appeal to this Court, however, the decrees of the lower courts were

set aside and the plaintiff's suit dismissed. The findings of the lower appellate court, which are binding upon us, are quoted in the judgment of the

learned Judge of this Court as follows:

I find that the land in suit is part of the abadi of mauza Sisolar, which consists of three mahals, and that this abadi has not been divided between the

mahals by demarcation on the village map or on the spot, but that the owners of the mahals have been in separate possession of portions of it and

that the plaintiff has been in possession of the land in suit.

2. The clear meaning of this finding is that the owners of each mahal have a separate portion of the abadi of which they are in exclusive possession.

This was the defendants' own case in the lower appellate court. The dispute there was that the defendants claimed that the particular plot on which

plaintiff wanted to build the wall was in their possession and not in the possession of the plaintiff. The learned Judge of this Court says:--"A second

appeal is preferred by the defendants, and it is argued by their learned Counsel that the property being joint, the plaintiff has no right to build and

he is not entitled to the decree given him. This objection is in my opinion sound." It seems to us that the learned Judge altogether lost sight of the

finding that the owners of the different mahals were all in exclusive possession of particular plots. The only inference which can be drawn from this

is that the parties by mutual consent allowed the owners of the different mahals to separately enjoy the different parts of the abadi, in other words,

that there was an agreement between the parties. This agreement must be inferred from the action of the parties themselves. So long, therefore, as

this agreement continues, the parties in exclusive possession of a part of the abadi are entitled to use it and enjoy it in such way as they please, so

long as such use or possession does not interfere with the use of owners of other mahals of what is in their separate possession. This principle was

fully recognized in the case of Kumudini Mazumdar v. Rasik Lal Mazumdar 11 C.W.N. 517 We think that the decisions of the courts below were

correct and ought to be restored. We accordingly allow the appeal, set aside the decree of the learned Judge of this Court and restore the decree

of the lower appellate court with costs of both appeals to this court.