

Jagarnath Ojha Vs Ram Phal and Others

None

Court: Allahabad High Court

Date of Decision: Nov. 21, 1911

Citation: (1912) ILR (All) 150

Hon'ble Judges: Tudball, J; Banerji, J

Bench: Division Bench

Final Decision: Disposed Of

Judgement

Banerji and Tudball, JJ.

The only question in this appeal is whether a plaintiff, who had never been in possession but was entitled to

possession jointly with other persons, could be granted a decree for joint possession. The facts of the case are fully set forth in the order of our

brother Chamier, by which he referred this case to a Bench of two Judges. They are briefly these: The property in suit, which is a share of

zamindari, originally belonged to one Lachmi Ojha. It passed on his death to his widow, and on the widow's death to the plaintiff, to the

respondents, and to others. As the plaintiff did not obtain possession of the property, he brought the suit out of which this appeal has arisen for

possession jointly with the defendants. He also-claimed damages, but that part of the claim has not been pressed in this Court. Other reliefs were

asked for with which we are not concerned in this appeal. The court of first instance decreed a part of the claim, but refused to grant a decree for

joint possession. This decree was affirmed by the lower appellate court. The contention before us is that a decree for joint possession ought to

have been passed in the plaintiff's favour. For the opposite contention reliance is placed upon the decision of a Bench of this Court in Phani Singh

v. Nawab Singh ILR (1906) All. 161. That case, no doubt, supports the view taken by the courts below, but with great deference we are unable

to agree with it. In the Full Bench case of Bhairon Rai v. Saran Rai ILR (1904) All. 588. it was held that where the plaintiff had been ousted from

joint possession by the defendants, a decree could be made in his favour for restoration to joint possession. We fail to see that on principle there is

any distinction between the case of a person who was in joint possession but was subsequently dispossessed, and the case of a person who was

entitled to joint possession, but had not obtained such possession. As pointed out by our brother Chamier, an action for joint possession is a well-

known form of action, both in England and in this country, and before the decision of the case of Rahman Chaudhri v. Salamat Chaudhri 1901

WN 48 decrees were always made for such possession. There may, no doubt, be cases in which the court may not deem it reasonable in the

interests of all the parties concerned to make a decree for joint possession. An instance of such a case is that of Watson & Co. v. Ram Chand

Dutt ILR (1890) Cal., 10. Another case of the same kind is that of Bhola Nath v. M. Buskin 1894 WN 127. That a decree for joint possession

can be made has until recently in this Court always been regarded as settled law, but if any doubt existed on the point, it has been removed by the

clear provisions of Order XXI, Rule 35, of the present Code of Civil Procedure. In our opinion the circumstances of the present case are such as

to entitle the plaintiff to a decree for joint possession. The courts below were, therefore, wrong in not granting him such a decree. We accordingly

allow the appeal, and vary the decree of the courts below by adding to the decree made by those courts a decree in the plaintiff's favour for joint

possession of the property decreed. The appellant will have his costs in this Court and in the courts below.