

(1949) 01 AHC CK 0020

Allahabad High Court

Case No: None

Ram Udar Das Chela
Falhari Baba Garib Das
Ji

APPELLANT

Vs

Baba Madho Das Chela
Sri Sitaram Das

RESPONDENT

Date of Decision: Jan. 12, 1949**Citation:** AIR 1949 All 614**Hon'ble Judges:** Seth, J**Bench:** Single Bench**Final Decision:** Allowed

Judgement

@JUDGMENTTAG-ORDER

Seth, J.

The sole question for decision in this application is whether the civil Court had jurisdiction to entertain the suit or whether its cognizance was barred by Rule 35 of the Nayabad and Wasteland Rules in the Kumaun Division. In substance, the relief claimed in the suit was as follows: That an injunction be issued against the defendant restraining him from making any pathway, stairs, ghat, house, chhapper, chabutra or a resting place on plot No, 364. It was further prayed that the defendant should be restrained from using the plaintiff's pathway No. 365.

2. The two Courts below held that the suit was not cognizable by a civil Court and for this reason the lower appellate Court has upheld the Order of the Court of first instance directing the plaint to be returned to the proper Court. The decision of the case depends upon whether it is covered by Rule 35, Nayabad Waste Land Rules. The dispute with regard to the two plots Nos. 364 and 365 will have to be considered separately as same considerations do not apply to both of them.

3. To take up the case about plot No. 364 first: It is undisputed that it is what is known as "benap" or Kaisar-i-Hind land. It is also undisputed that it is not a Nayabad grant inasmuch as it has not been granted for cultivatory purposes nor has it been broken for that purpose. Rule 35 bars the jurisdiction of the civil Court in the following cases: (1) where the suit is one to establish a claim affecting the validity of a Nayabad grant; (2) where it relates to a dispute regarding new cultivation or extension of cultivation and (3) where the suit is brought to establish a claim to any right in benap or Kaisar-i-Hind land. It is obvious that the case does not fall within the first category, because it does not relate to the validity of any Nayabad grant. It does not fall within the second category, because the land has not been brought under cultivation. The real point for consideration is whether it comes under the third category which deals with suits to establish a claim to any right in benap or Kaisar-i-Hind land. It appears to me that this category relates to suits in which the plaintiff claims to establish some right of his own and that it does not relate to suits in which the defendant's right is in dispute. Moreover, in the present case the plaintiff does not claim any right in himself in plot No. 364. His claim is founded upon an alleged claim on the basis of an agreement by virtue of which he claims that the defendant is bound to follow a certain course of conduct. In my opinion, therefore, the claim in respect of plot No. 364 is not covered by Rule 35, Nayabad and Waste Land Rules.

4. The case with regard to plot No. 365, as already observed by me above, stands upon a different footing. This plot is entered as benap or Kaisar-i-Hind land in the revenue records. The plaintiff clearly claims a right in himself with regard to this plot and prays that the defendant be restrained from passing over this land. The civil Courts are, therefore, not competent to decide this claim, In my opinion, therefore, the plaintiff should have been given an opportunity to amend his plaint so as to confine his claim to the reliefs prayed for in respect of plot No. 364 only, and the plaint should not have been ordered to be returned for presentation to the proper Court without this opportunity having been given to the plaintiff.

5. In the result, this application in revision is allowed and the case is remanded to the Court of first instance through the lower appellate Court with the direction that it should re-admit the plaint and call upon the plaintiff to amend the plaint by deleting the relief with regard to plot No. 365. After the plaintiff so amends the plaint, the suit shall be proceeded with in the civil Court. If the plaintiff fails to amend the plaint, it shall be returned to the plaintiff as not being cognizable by the civil Court. Costs here and hitherto shall abide the result.