

Bhiloo Pandey vs Mt. Sheoraji And Ors. on 28 March, 1950

Equivalent citations: AIR1950ALL535, AIR 1950 ALLAHABAD 535

JUDGMENT

Agarwala, J.

1. This is a defendant's appeal arising out of a suit for possession after demolition of certain construction. The plaintiffs were five persons. They claimed that the defendant had, in building a house on his land, encroached upon the piece of land which belonged to them by making constructions thereon.

2. Various defences were raised; one of them being that the plaintiffs were barred by the doctrine of acquiescence and estoppel. The trial Court found that part of the land in suit which belonged to plaintiffs 3 to 5 was undoubtedly encroached upon by the defendant-appellant in constructing the house. It also held that there was no estoppel but he said that since the house had been constructed six or seven years before the suit without protest the case was a fit one in which damages would meet that end of justice. It, therefore, passed a decree in favour of plaintiffs 3 to 5 for recovery of a sum of Rs. 250 and dismissed the suit so far as plaintiffs 1 and 2 were concerned. Against this there was an appeal by the plaintiffs 3 to 5 in the lower appellate Court. The lower appellate Court, while affirming the findings of the trial Court, held that damages were not the proper remedy, the plaintiffs should be allowed possession over their land. He, therefore, decreed the suit for possession.

3. The defendant has now come up in second appeal to this Court. On his behalf the findings recorded by the two Courts below have not been challenged. He has, however, urged that the trial Court's view of the law was right and that, in view of the fact that the house had been constructed six or seven years before the suit without any protest having been made by the plaintiffs-respondents, the plaintiffs-respondents were not entitled to get possession over the land and the plaintiffs could only obtain damages and not possession.

4. I think that the contention of the learned counsel has no force.

5. It is admitted that the parties were not co-sharers. The lower appellate Court has found that there was no estoppel or acquiescence. Admittedly plaintiffs 3 to 5 were the owners of the land in suit. On those findings, I cannot see on what ground this Court can refuse to grant the relief for possession to the plaintiffs. The plaintiffs have not claimed an equitable relief which can be moulded according to the equities of the case and which may, in particular circumstances, not be granted. It is a pure and simple action for ejectment of a trespasser. No doubt there is a relief for demolition of the building also but the removal of the constructions is indeed for the benefit of the defendant because if he refuses to demolish the constructions and the plaintiff chooses to take the land with the

constructions, he would be entitled to do so. In a case like this, the Court has no power to grant a decree for damages instead of granting a decree for possession to the owner of the land. Cases in which Courts have this power are well defined by law ; for instance, under Section 51, T. P. Act, in certain cases, the value of the land may be awarded to the rightful owner instead of possession thereof. The present case does not fall under any such provision of law.

6. This view is supported by a number of decisions in India : vide (1) Jethalal Hirachand v. Lalbhai Dalpatbhai, 28 Bom. 298 : (6 Bom. L. R. 86) ; (2) Gangadin v. Jagat 12 A. L. J. 1026 : (A. I. R. (1) 1914 ALL. 89) and (3) Dipnarain Singh v. Jagmohan, A.I.R. (12) 1925 ALL. 576 : (87 I. C. 15).

7. Learned counsel has shown me a certified copy of an unreported decision of a learned Judge of this Court. Apparently Sinha J. took a contrary view without, however, referring to the previous authorities Of this Court. In view of the rulings referred to above, I respectfully differ from the opinion of the learned Judge.

8. I would, therefore, dismiss this appeal with costs. Leave to appeal under Letters Patent is refused.