

Tikai Chamar vs Mohammad Ibrahim Khan on 22 August, 1951

Equivalent citations: AIR1953ALL398, AIR 1953 ALLAHABAD 398

JUDGMENT

Chandiramani, J.

1. This is a defendant's appeal against the appellate decree of Sri Khadim Ali, Additional Civil Judge, Faizabad, dated 12-11-1946.

2. The plaintiff Mohammad Ibrahim Khan alleged that he was a grove-holder of the grove in plot No. 1808 situated in village Sheotara and that he had been dispossessed from the same in 1945 as a result of certain proceedings for correction of papers in the Revenue Court. He accordingly sought to recover possession of the grove. The defence was that the defendant Tikai Chamar was the grove-holder and the matter had been decided in his favour in the Revenue Court and this finding was final and could not be questioned. The question of jurisdiction was also raised and it was apparently decided in the trial Court against the defendant. The issue as to whether the plaintiff was a grove-holder or not was sent to the Revenue Court, and the Revenue Court held that the plaintiff is a grove-holder. In these circumstances the plaintiff's suit was decreed. On appeal the question of jurisdiction was not pressed. The question whether the plaintiff was a grove-holder was urged once again and decided against the defendant-appellant.

3. In this second appeal the only point pressed before me is that the decision of the Revenue Court in the correction of papers case operates as res judicata and reliance was placed on Baghubar Dayal v. Bhagwan Din, 15 B. d. 720. According to that authority where an application for correction of papers under Section 33, U. P. Land Revenue Act, 3 of 1901, is contested it becomes a suit under Section 42, Land Revenue Act, relating to disputes respecting the class or tenure of any tenant, and a finding arrived at under Section 42 proceedings that a person is a sub-tenant and not a co-tenant operates as res judicata in any subsequent litigation. There the plaintiff claimed to be a co-tenant and not a sub-tenant as alleged by his landholder. There was no denial as to tenancy, but it was the class or tenure which was disputed. In the present case the very tenancy is disputed, assuming that the grove-holder is a tenant for purposes of Section 42. The proceedings for correction, therefore, in the Revenue Court did not fall under Section 42 in the present case, and there is no question of those proceedings operating as res judicata for the present suit. As the contention on the point raised by the appellant fails there is no force in this appeal. It is accordingly dismissed with costs.