

Allahabad High Court

Hazari vs Ram Dular And Ors. on 2 April, 1924

Equivalent citations: AIR 1925 All 702

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JUDGMENT Daniels, J.

1. This case is somewhat extreme instance of the Law's delays. The suit was filed in the year 1917, but owing to various appeals and remands by this Court it is only now coming up for final decision in the year 1924. The suit is one for ejectment of sub-tenant of sir land. The points in dispute are quite simple. The memorandum of appeal consists of five paragraphs, but the points urged in appeal are only two. The first is that the defendant-appellant has acquired occupancy rights. If the land is sir land occupancy rights cannot be acquired in it, and there is a finding of fact of the Court below based on the Settlement records that this land is sir. The finding disposes of the first plea.

2. The second plea is that the defendant has acquired the status of a grove holder by reason of his planting a number of guava trees on the land. The learned District Judge may be wrong in saying that guava trees cannot constitute a grove, but his substantial finding is that in the current case they do not. He finds that they are scattered over a large area and do not in any way interfere with the agricultural nature of the land. The Assistant Collector's finding was to the same effect, Indeed the Assistant Collector inspected the spot and found that the trees could only have been planted a very short time before the institution of the original suit in 1917, and were planted without the permission of the zamindar. This last finding has not been specifically referred to by the learned District Judge, but if it was necessary to do so in order to save a remand, I should be prepared to affirm it. It was not alleged in the written statement that the trees were planted with the zamindar's consent, and indeed the proviso to Section 88 of the Tenancy Act declares that no non-occupancy tenant is entitled to plant trees without the zamindar's written consent which, in this case, has certainly not been alleged. On the facts as found the land in suit was an agricultural holding at the time this suit was instituted and the defendant had not acquired the character of a grove-holder. The decree of the Court below is, therefore, correct, and I dismiss this appeal with costs.