

APPELLATE CIVIL.

Before Justice Sir Parmada Charan Banerji and Mr. Justice
Muhammad Rafiq.

BHAGWAN DIN AND ANOTHER (DEFENDANTS) v. PIARI LAL
(PLAINTIFF)*

1920
April, 10.

Mortgage and sale of a grove—Claim of mortgagors to be expropriary tenants—“Sir”.

Land which is simply grove and not agricultural land cannot be *sir* of the proprietor, of which he could become the ex-proprietary tenant, even though it may have been recorded as *sir* in the village papers.

THE plaintiff in this case sued to recover from the defendants the value of the branches of certain trees which the plaintiff had cut down, but which the defendants had removed and appropriated. They also asked for an injunction restraining the defendants from interfering with the trees. The trees appertained to a grove which was the *muafi* of the defendants. They, as such *muafidars* and as grove-holders, mortgaged it to the plaintiff. The plaintiff obtained a decree for sale on the basis of the mortgage, and in execution of his decree purchased the grove. The defendants pleaded that the land was their *sir* and that they had acquired the rights of ex-proprietary tenants in respect of it, and that consequently they were entitled to appropriate the timber of the trees existing on the land. The court of first instance (Munsif of Shahjahanpur) found that the defendants were ex-proprietary tenants and that they consequently had a right to the cut branches. The plaintiff appealed and the lower appellate court (District Judge of Shahjahanpur) finding that the defendants could not be ex-proprietary tenants so far as the grove land was concerned, whatever they might have been recorded, reversed the Munsif's decision and gave the plaintiff a decree, though not for the full amount claimed by him. The defendants appealed to the High Court, and the appeal coming before a single Judge of the Court was referred to a Division Bench.

Munshi Lakshmi Narain, for the appellants.

Maulvi Iqbal Ahmad, for the respondent.

* Second Appeal No. 1159 of 1917, from a decree of Mubarak Husain, District Judge of Shahjahanpur, dated the 19th of July, 1917, modifying a decree of Radha Kishan, Munsif of Shahjahanpur, dated the 9th of May, 1917.

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BANERJI and MUHAMMAD RAFIQ, JJ. :—We are of opinion that the decision of the court below is correct. The plaintiff brought the suit which has given rise to this appeal, for recovery of the value of the branches of certain trees which the plaintiff had cut down, but which the defendants had removed and misappropriated. They also asked for an injunction restraining the defendants from interfering with the trees. The trees appertained to a grove No. 872 which has been found to have been the *muafi* of the defendants. They, as such *muafidars* and as grove-holders, mortgaged it to the plaintiff. The plaintiff obtained a decree for sale on the basis of the mortgage, and in execution of the decree purchased the grove. After this auction purchase he became the sole owner of the grove. The defendants contend that the land was their *sir* and that they had acquired the rights of ex-proprietary tenants in respect of it, and that consequently they were entitled to appropriate the timber of the trees existing on the land. As it is admitted and as it has been found that the land was the *muafi* of the defendants; they could not have any *sir* rights in respect of this land. It was not land which was held by them for agricultural purposes, but was admittedly a grove. As a grove it could not have been their *sir* land, which necessarily implies land cultivated by the proprietor, that is, the land-holder. It is true that at the time of settlement in 1305 the land was recorded as *sir*, but it is manifest from the facts which have been found by the court below, that that entry was erroneous and that in reality the land was only the grove of the defendants and not their *sir*-land. Under these circumstances the defendants cannot be held to have acquired a right to the trees as the holders of an ex-proprietary holding. The plaintiff has acquired all the rights which the defendants had as grove-holders. We dismiss the appeal with costs.

Appeal dismissed.