

is most unsatisfactory of itself and that they see no adequate reason for not accepting the evidence of Parbhū Dayal, an independent witness, as to the occasion in the autumn of 1919.

Their Lordships are therefore of opinion that the appellant became aware in 1919 of the only material fact, namely, the passing of the Rs. 25,000 as consideration for the deed of gift, even if it be assumed that this was the sole consideration of, and was concealed by, the deed of gift, that the suit is thereby statute-barred, and that the appeal should be dismissed with costs. Their Lordships will humbly advise His Majesty accordingly.

Solicitors for appellant: *Chapman-Walker and Shephard.*

Solicitors for respondents Nos. 1 to 6: *T. L. Wilson and Company.*

FULL BENCH.

Before Sir Louis Stuart, Knight, Chief Judge, Mr. Justice Wazir Hasan and Mr. Justice Muhammad Raza.

BACHCHA (DEPENDANT-APPELLANT) *v.* SETH JAMNA DAS AND OTHERS, PLAINTIFFS, AND ANOTHER, DEFENDANT, (RESPONDENTS)*.

1929
July, 22.

Tenant transferring scattered trees—Transferee, whether entitled to remove only timber or to enjoy the fruit so long as the trees stand.

Held, that unless a tenant having scattered trees in the village has a transferable right to the land on which the trees stand, even if he has a right to transfer the trees themselves, such transfer will not entitle his transferee to more than the timber of the trees.

Mohammad Akbar and another v. Lachman Prasad (1), and Musammat Azamat-un-nisa v. Ganesh Prasad and others (2), referred to.

*Second Civil Appeal No. 428 of 1928, against the decree of Pandit Damodar Rao Kelkar, Subordinate Judge of Rae Bareilly, dated the 24th of August, 1928, reversing the decree of Pandit Dwarka Prasad Shukla, Munsiff of Partabgarh, dated the 16th of February, 1928.

(1) (1927) 4 O. W. N., 970.

(2) (1924) 1 O. W. N., 515.

1930
ABDUL
RAHMAN
KHAN
v.
PARSOTAM
DAS.

P. C.

1929

BACHCHA
v.
SETH
JAMNA
DAS.

Mr. *Radha Krishna*, for the appellant.

Mr. *Har Dhian Chandra*, for the respondents.

STUART, C. J. :—The following point has been referred to a Full Bench for decision under section 14(1) of the Oudh Courts Act of 1925 :—

“Where it has been established that a tenant having scattered trees in a village has a right to sell them and sells such trees, is the landlord entitled to compel the vendee to remove the trees and not to allow him to enjoy the fruits of those trees as long as they stand?”

This question was referred by the late Mr. Justice MISRA. I regret that I am unable to answer it by an affirmative or a negative. I have first to explain the circumstances in which the question arose and then my view of the law upon the facts. Here an agricultural tenant had planted trees in various plots of land, if not with the express permission of the Taluqdar, at any rate without any opposition on his part and had continued to enjoy the fruits of those trees (in instances in which they bore fruits) until he mortgaged the trees with possession. He mortgaged the trees with possession and the mortgagee then used the trees in the same manner in which he had used them himself. He sold the right to redeem to Bachcha, the present appellant. Bachcha redeemed the mortgage. The Taluqdar then instituted the present suit for the ejectment of Bachcha from the plots on which the trees stood and from the trees themselves. The suit for his ejectment from the plots appears to have been misconceived as it does not appear that he had been in possession of those plots and it would appear that the decree of the lower appellate court ejecting him from the plots had been passed on a misconception of the facts. The real point however with which the court was concerned was this. Does Bachcha's purchase entitle him to the same rights as appertained to his vendor or does

it entitle him only to remove the trees or does it entitle him to nothing? It is agreed that in the circumstances of the case he obtained some rights. The question is what are those rights? It is common ground in this case that he must have at least the rights to remove the timber. But has he anything more? In my opinion he has nothing more. There has been no special contract or custom to the contrary. His vendor can only be considered as a licensee of the land on which the trees stood. His vendor had the right to use the land both for the planting of the trees and for the sustenance of the trees while they were alive. But could he transfer this right? In the absence of custom or contract he certainly could not, for he was only a licensee and such a licence as he possessed is not transferable. Therefore when he transferred the trees he could not transfer the right to use the land and once the right to use the land had departed the only benefit that could be left to the vendee was to remove the trees. My view appears to me to be very much the same view that was taken by my learned brother Mr. Justice HASAN in *Mohammad Akbar and another v. Lachman Prasad* (1). I should answer the question that unless a tenant having scattered trees in the village has a transferable right to the land on which the trees stand, even if he has a right to transfer the trees themselves, such transfer will not entitle his transferee to more than the timber of the trees.

1929

 BACHCHA
 v.
 SETH
 JAMNA
 DAS.

Stuart, C. J.

HASAN, J. :—I entirely agree with the view which the learned CHIEF JUDGE has just now expressed on the question of law involved in this reference. If I may respectfully do so I may add that the legal basis on which the learned CHIEF JUDGE has placed this question is the sound basis and it would seem to be implied in my decision in a previous case: *Mohammad Akbar v. Lachman Prasad* (1) to which the learned CHIEF JUDGE has referred. In that case I followed the principle of another

(1) (1927) 4 O. W. N., 970.

1929

BACHCHA
v.
SETH
JAMNA
DAS.

decision of mine in *Musammat Azmat-un-nissa v. Ganesh Prasad and others* (1) and it appears that the principle involved in both class of cases, that is the right of a tenant in a house without any right in the site of the house and the right of a planter of a tree in the village lands without any right in the soil of the tree, stands on one and the same footing.

RAZA, J. :—I am in full agreement with the judgment of the Hon'ble the CHIEF JUDGE. My answer to the question referred to the Full Bench for decision is the same as that given by the Hon'ble the CHIEF JUDGE.

BY THE COURT :—The reference is returned to the court with the replies.

APPELLATE CIVIL.

Before Mr. Justice Wazir Hasan and Mr. Justice Bisheshwar Nath Srivastava.

1929
August, 23.

GANESH SINGH AND OTHERS (DEFENDANTS-APPELLANTS)
v. SITLA BAKHSH SINGH AND OTHERS (PLAINTIFFS-RESPONDENTS).*

Indian Registration Act (XVI of 1908), section 17, clause (b) and section 49—Market, right to hold—Right to hold bazar on one's land is an incident to the ownership of land—Agreement between proprietors of two villages allocating days for holding bazar—Registration of an agreement to hold bazar on particular days.

The right to hold a market on one's land is an incident to the ownership of land and is a right in immoveable property, *Hem Chandra Roy Chaudhry v. Krishna Chandra Saha Sardar* (2), relied on.

An agreement between the proprietors of two villages allocating particular days for holding the bazar in their villages coupled with the condition that the parties are not to be allowed to hold the bazar on certain other days is clearly a

*Second Civil Appeal No. 270 of 1928, against the decree of M. Mahmud Hasan, 3rd Additional District Judge of Lucknow, dated the 30th of April, 1928, upholding the decree of Mirza Mohammad Munim Bakht, Additional Subordinate Judge of Lucknow, dated the 26th of July, 1927.

(1) (1924) 1 O. W. N., 515.

(2) (1920) I. L. R., 47 Calc., 1079.