

## APPELLATE CIVIL.

Before Mr. Justice Bisheshwar Nath Srivastava

LACHMI NARAIN, LALA (DEFENDANT-APPELLANT) v. 1932  
KAMTA PRASAD, LALA (PLAINTIFF-RESPONDENT).\* July, 29.

*Resumption—Grove—Portion of grove losing its character as such—Piecemeal resumption, whether permissible—Whole area to be under one grant—Two groves given under different grants—Principle of piecemeal resumption, applicability of.*

There can be no resumption piecemeal. The mere fact that a portion of the grove has become devoid of trees does not entitle the landlord to resume that portion of it. The plot must be taken to have been granted as a whole and the tenure must stand or fall as a whole, unless some custom or contract is shown to the contrary.

For the application of the principle enunciated above, it is necessary that the entire area must be held under one single grant. It has no application to a case in which separate groves are held under different grants. *Lala Jagdish Bahadur Singh v. Ragho Ram* (1), relied on.

Mr. *Kismat Rai Jagadhari*, for the appellant.

Mr. *H. N. Misra*, for the respondent.

SRIVASTAVA, J.:—This is a defendant's appeal against the decision, dated the 7th of October, 1931, of the first Subordinate Judge of Bahraich modifying the decision, dated the 27th of March, 1931, of the Munsif of that place.

The plaintiff, Kamta Prasad, instituted the suit which has given rise to this appeal for possession of two plots Nos. 1375 and 1376 situate in Bahraich, Mohalla Qanungopurwa, on the allegation that he had been holding the plots in suit as a grove-holder and that he had been wrongfully dispossessed by defendants Nos. 1 and 2 in January, 1929. Defendants Nos. 1 and 2 pleaded

\*Second Civil Appeal No. 365 of 1931, against the decree of M. Muhammad Abdul Haq, First Subordinate Judge of Bahraich, dated the 7th of October, 1931, modifying the decree of Babu Kamta Nath Gupta, Munsif of Bahraich, dated the 27th of March, 1931.

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that they had been admitted into the occupation of the plots in suit as tenants by one Lachmi Narain, who was the owner of the said plots. Lachmi Narain was subsequently, on an order passed by the court of appeal, impleaded as defendant No. 3. Lachmi Narain's case was that the plots in suit, of which he was the owner, had lost their character as groves and had been resumed by him and let out to the defendants Nos. 1 and 2 for cultivation.

The learned Munsif held that plot No. 1375 and a portion of No. 1376, described as No. 1376/1, still continued to bear the character of groves. But as regards another portion of No. 1376, described as No. 1376/2, the finding of the learned Munsif was that it was no more a grove. He accordingly decreed the plaintiff's claim for Nos. 1375 and 1376/1 and dismissed it in respect of No. 1376/2. Lachmi Narain appealed and Kamta Prasad, plaintiff, filed cross-objections. The lower appellate court was of opinion that the two plots Nos. 1375 and 1376 constituted one single grove, and that the two plots taken as a whole still retained the character of a grove. As a result of this finding he dismissed the appeal of Lachmi Narain and allowed the cross-objections of Kamta Prasad, and decreed the plaintiff's claim in its entirety.

The first and the main question which requires determination in this appeal is whether or not the two plots Nos. 1375 and 1376 constitute one single grove. Exhibit C6 *hissa kashi* of the first settlement shows that old No. 349, which corresponds to the present No. 1376, was a grove in possession of a barber and a Brahman. There is absolutely no evidence to show in respect of the other No. 1375, which corresponds to No. 350 old, whether it was a grove or not at the time of the first regular settlement, and whether it was then held by the same persons who held No. 349, or by any other persons.

The document next in point of time which we have on the record is exhibit C2, the *chithi* prepared at a

partition which took place in 1885. This also does not show who were the persons in possession either of No. 349 or No. 350 at the time of the partition, nor have we any other evidence on the point. All that the partition *chithi* shows is that these plots were allotted to the share of the grandfather of Lachmi Narain, defendant No. 3. The partition map shows that some trees existed on No. 349 but No. 350 is not shown as having any tree on it. Exhibit C3 is the  *khasra*  of the second settlement. This  *khasra*  also does not show the name of the plaintiff against either of the two numbers in suit. Thus there is absolutely no evidence to show how and when the plaintiff, who is a Kayasth, came into possession of the plots in suit. Nor is there any evidence to show that both the plots in suit were constituted a grove at one and the same time or by one single grant. The lower appellate court has based its decision on a ruling of this Court in  *Lala Jagdish Bahadur Singh v. Ragho Ram*  (1). It was held in this case that where a plot of land is given to a person to plant a grove thereon, the landlord is not entitled to enter into possession of portions of the grove which have become vacant or to cultivate them himself or to let them for cultivation to others. It was observed that "the plot must be taken to have been granted as a whole and the tenure must stand or fall as a whole, unless some custom or contract is shown to the contrary. The mere fact that a portion of the grove has become devoid of trees does not entitle the landlord to resume that portion of it; in fact there can be no resumption piecemeal." It seems to be perfectly clear that for the application of the principle enunciated in this case with which I am in full agreement, it is necessary that the entire area must be held under one single grant. It has no application to a case in which separate groves are held under different grants. In the present case the learned counsel for the plaintiff-respondent is unable to refer me to any evidence to show that the two

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(1) (1926) 3 O.W.N., 392.

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plots in suit were held under one grant. The ruling in *Lala Jagdish Bahadur Singh v. Ragho Ram* (1) has, therefore, no application to the case. Admittedly plot No. 350 has an area of 19 biswas and there is only one tree standing on it. I have no hesitation in holding that the plot no longer bears the character of a grove. The defendant-appellant was, therefore, entitled to resume it and the plaintiff's claim in respect of it must fail.

Next as regards the other plot No. 1376. It has an area of 3.810 acres and has 23 trees standing on it. Some time during the currency of the second settlement it appears that in the revenue papers the plot had been split up into 1376/1, 1376/2, and 1376/3, but the circumstances under which this sub-division took place are not known. Leaving aside No. 1376/3, with which we are not concerned in this suit, admittedly the plaintiff was in possession of Nos. 1376/1 and 1376/2 at the time when defendant No. 3 resumed possession and let them out to defendants Nos. 1 and 2. Number 1376 at the time of the partition of 1885 and at the time of the second settlement was all along treated as one plot which was described as a grove. The fact that in the revenue papers it has been subsequently split up into three portions with different denominators, would not affect the character of the grove or any portion of it. I am, therefore, in agreement with the lower appellate court that plots Nos. 1376/1 and 1376/2 which, as I have just stated, must be treated as constituting one grove, still retain their character as such.

The result, therefore, is that I allow the appeal in respect of plot No. 350 old = 1375 new. The plaintiff's claim in respect of this plot will be dismissed. The rest of the decree of the lower court will stand. The parties will pay and receive costs according to their success and failure in all the courts.

*Appeal partly allowed.*