

CIVIL APPELLATE

Before Harnam Singh, J.

HARI KISHAN,—Defendant-Appellant.

versus

RAGHBIR SINGH AND ANOTHER,—Plaintiffs-Respondents.

Regular Second Appeal No. 274 of 1948.

Custom—Non-proprietor—Given a site for a particular purpose but he used it for another purpose—Forfeiture of right of user.

Held that where according to the conditions of *Wajib-ul-arz* the site in question was given to the ancestors of the defendant—the non-proprietor—for the purpose of storage of cow-dung cakes, the defendant was not competent to use the site for another purpose and build upon it and, therefore, he forfeited his right of user and was liable to be ejected.

Amin Chand and others v. Dasoundha Singh and others (1), relied upon.

Second appeal from the decree of Shri Balak Ram, District Judge, Hissar, dated the 5th February 1948, modifying that of Shri D. N. Narang, Senior Sub-Judge, Hissar, dated the 12th May 1947, to the extent of granting the plaintiffs a decree with regard to plot No. A B C D in the plan, Ex. P. 2, but maintaining the decree in respect of plot No. C D E F with costs throughout.

JAGAN NATH SETH, for Appellant.

P. C. PANDIT, for Respondents.

JUDGMENT.

HARNAM SINGH J. Hari Kishan appeals under section 100 of the Code of Civil Procedure, 1908, from the

(1) 54 P. R. 1886.

1950

June 20

Hari Kishan, decree passed by the District Judge, Hissar, in Civil
 v. Appeal No. 32-H of 1947 on the 5th of February 1948.
 Raghbir Singh
 and another,

Harnam
 Singh J.

The point in dispute in the present proceedings is whether the decree of the lower appellate Court giving possession of the plot ABCD to the plaintiffs can be sustained on the conditions of the *Wajib-ul-arz* prepared in the Settlement of 1890-91. Mr. Jagan Nath Seth contends that inasmuch as the trial Court found issue No. 2 in favour of the defendant-appellant the lower appellate Court was in error in decreeing possession of the plot ABCD without upsetting the finding reached by the trial Court on issue No. 2.

Now, the trial Court found on issue No. 2 that inasmuch as the plaintiffs admitted that the site ABCD was previously in possession of the defendant the latter was entitled under the conditions of the *Wajib-u-arz*, Ex. P. 4, to build as of right on the plot ABCD. In allowing the appeal the lower appellate Court said :

“ As defendant has made constructions contrary to the object and purpose for which his ancestors were granted this vacant site he is not entitled to the possession thereof. ”

Clearly there is no force in the contention raised.

The question that remain for consideration is whether the defendant was entitled to build the *kotha* in question under the conditions of the *Wajib-ul-arz*. Condition No. 7 of the *Wajib-ul-arz* prepared in the Settlement of 1890-91 reads :

“ The ownership of the site under *abadi* vests in the proprietors. A non-proprietor can sell the *malba*, provided the value of that *malba* exceeds Rs. 20. Every person can extend or alter the *kotha kham* existing on the site in his possession, but a non-proprietor cannot build *pacca* building without the consent of the proprietors. No person

can build on the vacant site *pukhta* house or *kham* house without the consent of the proprietors. * * * "

Hari Kishan,
v.
Raghibir Singh
and another,

Harnam
Singh J.

Now, condition No. 7 of the *Wajib-ul-arz* expressly provides that a non-proprietor cannot build on a part of the vacant site of the *abadi* without the consent of the proprietors. This condition has been contravened by the defendant-appellant, with the result that he is liable to eviction from the site. Authority for this proposition is to be found in *Amin Chand and others v. Dasoundha Singh and others* (1). In that case Smyth, J. (Tremlett, J., concurring) said :—

“In this case it appears that the defendants, who are weavers, were permitted to erect looms on a portion of the common land, but no permission was granted to them to build houses on the site. So long as they used the land for carrying on their trade they could not under a well recognised custom be ejected. But when they diverted the site to another purpose, not warranted by the grant, and built upon it, they forfeited their rights of user and are liable to ejection.”

In the present case the site ABCD was given to the ancestors of the defendant-appellant for the purpose of storage of cow-dung cakes. The defendant-appellant has, however, diverted the site to another purpose and built upon it. That being so, the case falls within the rule laid down in *Amin Chand and others v. Dasoundha Singh and others* (1).

No other point arises in these proceedings.

In the result, the appeal fails and is dismissed with costs.

(1) 54 P. R. 1886.