
(1912) 07 AHC CK 0030
In the Allahabad High Court

Abdul Aziz

APPELLANT

Vs

Basdeo Singh and Others

RESPONDENT

Date of Decision : 02-07-1912

Acts Referred:

Citation : (1912) ILR (All) 604 : 17 Ind. Cas. 89

Hon'ble Judges : Muhammad Rafiq, J;Chamier, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Chamier and Muhammad Rafiq, JJ.—This appeal arises out of a suit brought against several persons for the rent of a fixed rate holding. The suit was dismissed by the court of first instance, and the plaintiff appealed to the District Judge. While the appeal was pending, one of the defendants respondents died, and the plaintiff appellant failed to apply to the court within the prescribed time to make his heirs respondents in his place. The court then held that the appeal was not maintainable against the remaining respondents, and with reference to a prayer that the court should consider the case u/s 5 of the Limitation Act, the court held that that Section did not apply to the appeal. The result was that the appeal was dismissed. This is a second appeal by the plaintiff, on whose behalf it is contended (1) that the liability of the defendants to the suit was joint and several and not joint only, and therefore the appeal should have been allowed to proceed against the surviving respondents; (2) that Section 5 of the Limitation Act applied to the case. On the first point the case seems to be covered by the decision of the Calcutta High Court in Joy Gobind Laha v. Monmctha Nath Bantrji I.L.R.(1906)Calc 580. That was a suit against several persons for the recovery of the rent of a holding. After an appeal had been filed by the plaintiff, one of the defendants respondents died, and no attempt was made by the appellant to get the legal representatives of "the deceased respondent substituted on the record. The remaining respondents." objected that the appeal could not proceed. The court held that as the liability of the holders of the tenure was joint and several,

the appeal could proceed against the surviving respondents, and that it abated only as far as the deceased respondent was concerned. There seems to be no reason for distinguishing between the liability of several holders of a fixed-rate tenure and the liability of several tenants of any other holding. The liability of fixed-rate tenants in respect of the rent of their holding appears to be joint and several. The case is, therefore, on all fours with the case decided by the Calcutta High Court. In this connection, we may refer to the case of Muhammad Askari v. Radhe Ram Singh ILR (1900) All. 507 where the court held that the effect of Section 43 of the Indian Contract Act was to exclude the right of a joint contractor to be sued along with his co-contractors. We allow this appeal, set aside the decree of the lower appellate court, and remand the case to that court to be restored to the pending file and disposed off according to law. Costs in this Court will be costs in the cause.