
(1880) 07 CAL CK 0006
In the Calcutta High Court

Asman Singh

APPELLANT

Vs

Doorga Roy and Others

RESPONDENT

Date of Decision : 14-07-1880

Acts Referred:

Contract Act, 1872 — Section 239

Citation : (1881) ILR (Cal) 284

Hon'ble Judges : Mitter, J; Maclean, J

Bench : Division Bench

Judgement

Mitter, J.—The plaintiff seeks to recover from the first party defendants the sum of Rs. 412-8 under the following circumstances.

2. The plaintiff is the owner of nine annas of Mouza Ishakpore, and the defendants, first and second parties, of one anna and six annas respectively. The plaintiff is in charge of the collection of the rent of the mouza from the tenants. There are thirty-two bighas of khoodkast lands, which have been distributed amongst the proprietors in proportion of two bighas per anna, for which no rent is realisable.

3. Over and above their proportionate share of the khoodkast lands, the defendants first party cultivated fifty-four bighas in the years 1281, 1282, 1283, and 1284. The plaintiff brought a suit, under Beng. Act VIII of 1869, to recover rent for these years on account of these lands from the defendants first party, and obtained a decree in the Court of first instance. But on appeal the suit was dismissed on the ground that there did not exist the relationship of landlord and tenant between the parties, and that its frame was misconceived, inasmuch as the plaintiff could not recover anything without an adjustment of account between the shareholders regarding the profits of the mouza. The plaintiff has, accordingly, brought this suit, alleging that, on an adjustment of accounts of the profits of the mouza, he is entitled to recover the sum claimed, This being the nature of the suit, a preliminary objection has been taken to the hearing of this second appeal, on the ground that the suit was one of a nature cognizable by a

Court of Small Causes. The appellant's pleader, on the other hand, urges, first,-- that a Court of Small Causes, u/s 6 of Act XI of 1865, has no jurisdiction to try a case in which accounts have to be taken; and secondly, that under the first proviso of the Section in question, such a Court is not competent to take cognizance of the present suit. Several cases have been cited in support of their respective contentions:--Shurrut Chunder Kur v. Ram Sunkur Surmah 10 W. R., 214, Huro Mohan Roy v. Khettro Monee Dossee 12 W. R. 372, Sunkur Lall Puttuck Gyawal v. Mussamut Ram Kalee Dhamin 18 W. R. 104, Krishna Kinkur Roy v. Madhub Chunder Chuckerbutty 21 W. R. 283, Jooqul Kishore Roy v. Rughoonath Seal 20 W. R. 4, Dyebukee Nundun Sen v. Mudhoo Mutty Goopta ILR 1 Cal 123 ; s.c., 24 W.R. 478, and Buldeo Sing v. Ram Surun Lall 25 W. R. 234.

4. Having regard to the provisions of Section 6, Act XI of 1865, and to the authorities cited before us, we think the preliminary objection taken must prevail. The suit is substantially one in which one of the joint owners of a mouza seeks to recover, to the extent of his share, profits of the mouza from a co-sharer, who has appropriated the same in excess of his own share. Such a claim as this is evidently based upon an implied contract which exists between the joint owners of a zemindary or other landed property, and by which one co-sharer binds himself to make good to the others any profits which he may have appropriated in excess of his own proper share: Sunkur Lall Pattuck Gayawal v. Mussamut Bam Kalee Dhamin (18 W. R. 104).

5. The contention that a Court of Small Causes is not competent to take cognizance of any case in which an account is to be taken is, we think, untenable. If it were valid, there would have been no necessity for the proviso upon which the learned pleader for the appellant relies in the alternative. See also Dyebukee Nundun Sen v. Mudhoo Mutty Goopta I. L. R. 1 Cal. 123; s.c., 24 W. R. 478. We are also of opinion that the present suit cannot be considered to be "on a balance of partnership account," in the sense in which these words have been used in the first proviso of Section 6 of Act XI of 1865. The word "partnership" here, it seems to us, refers to the relation which subsists between certain persons as defined in Section 239 of the Contract Act. The appeal must, therefore, be dismissed with costs.