

(1917) 06 AHC CK 0004
In the Allahabad High Court

Bakhtawar Lal and Another

APPELLANT

Vs

Sheo Prasad and Others

RESPONDENT

Date of Decision : 28-06-1917

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 26 Rule 18, Order 26 Rule 9

Civil Procedure Code, 1908 (CPC) — Order 26 Rule 18, Order 26 Rule 9

Civil Procedure Code, 1908 (CPC) — Order 26 Rule 18, Order 26 Rule 9

Citation : AIR 1917 All 70 : 42 Ind. Cas. 720

Hon'ble Judges : Ryves, J;Piggott, J

Bench : Division Bench

Judgement

1. This is an appeal by the defendants in a suit for profits. The plaintiff's claim has been decreed, upon a finding that the evidence on the record is sufficient to prove that at least 90 percent, of the recorded rental during the years in suit was actually realised by the lambardar, the father of the defendants appellants. We cannot interfere with that finding of fact, unless it can be shown to be open to exception on some legal ground. The point taken is that the learned District Judge has based his decision upon the report of a certain Commissioner appointed by the Assistant Collector, though the Assistant Collector himself had declined to act upon that report, which was open to exception. upon various grounds. The learned District Judge has discussed this matter at length and he has fully realised that the report of the Commissioner must be accepted with caution. The question which we have to determine, however, is simply whether it is admissible in evidence. The provisions of Order XXVI of the CPC are applicable to suits under the Tenancy Act. In view of rules 9, 16, 17 and 18 of the aforesaid Order we are not prepared to say that the report of the Commissioner was inadmissible.

2. The result is that the appeal must fail, and we dismiss it accordingly with costs.