
(1912) 04 AHC CK 0025
In the Allahabad High Court

Dewan Bahadur Seth Ballab Das

APPELLANT

Vs

Sita Ram and Others

RESPONDENT

Date of Decision : 26-04-1912

Acts Referred:

North Western Provinces Tenancy Act, 1901 — Section 160

Citation : 14 Ind. Cas. 578

Hon'ble Judges : Tudball, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Tudball, J.—This appeal arises out of a suit brought u/s 160 of the Tenancy Act to recover arrears of revenue paid by one co-sharer on behalf of a defaulting co-sharer. The facts are briefly as follows: The defendants Nos. 4 and 5 were the owners of certain shares. These shares were attached and sold on the 23rd of March 1905, i.e., in 1312 Fasli, in execution of a decree. The defendants Nos. 1 to 3 purchased the property at auction sale. The defendants Nos. 4 and 5 then filed objections to the sale and asked that it might be set aside. On the date fixed for hearing, they did not appear and an ex parte order was passed confirming the sale. But they again came to Court and asked to have the ex parte order set aside on the ground that they had good cause for their non-appearance. The Court allowed this application, set aside the ex parte order, and re-entertained the objections. These objections were finally decided on the 15th of April 1908 when they were disallowed. In the year 1314 Fasli, which corresponds to 1906-07 A.D., the plaintiffs paid certain arrears of revenue which were due on account of the shares of defendants Nos. 4 and 5. At that time defendants Nos. 1 to 3 had not been put into possession by the Court on the basis of their purchase. They were actually put into possession on the 2nd of June 1908. The plaintiffs brought a suit against both sets of defendants. The first Court, gave a decree against defendants Nos. 1 to 3, the auction-purchasers. The lower Appellate Court has dismissed the suit as against these defendants and granted a decree against defendants Nos. 4 and 5. The plaintiffs come here

in second appeal and claim that they are entitled to a decree against defendants Nos. 1 to 3. Section 160 of the Tenancy Act shows that the suit contemplated by that Section can only be brought against a defaulting co-sharer, i.e. a co-sharer from whom revenue is due to Government and who has defaulted in payment thereof. When the revenue in suit fell due, defendants Nos. 4 and 5 were still in possession and the auction-sale had not been confirmed. Section 142 of the Land Revenue Act says that the word proprietor in that Section means a person in proprietary possession for his own benefit. Defendants Nos. 1 to 3 were not then in proprietary possession and as such were clearly not liable for the revenue and were, therefore, not defaulting co-sharers. The revenue was due for a period prior to the date on which they obtained possession. Therefore, the plaintiffs were not entitled to a decree as against them. The decree of the Court below was perfectly right. This appeal is dismissed with costs.