
(1933) 08 AHC CK 0093
In the Allahabad High Court
Case No : S.A. No. 784 of 1933

Hasina Begam, Musammat and Others	APPELLANT
Vs	
Abdul Hafiz	RESPONDENT

Date of Decision : 11-08-1933

Acts Referred:

Agra Tenancy Act, 1926 — Section 226, 227
Contract Act, 1872 — Section 37

Citation : (1933) 08 AHC CK 0093

Hon'ble Judges : Rachhpal Singh, J; Niamatullah, J

Bench : Division Bench

Advocate : A.M. Khwaja, for the Appellant; B. Malik, for the Respondent

Final Decision : Dismissed

Judgement

Niamatullah and Rachhpal Singh, JJ.—The order in this case (First Appeal from Order No. 137 of 1932) will also govern and dispose of Civil Revisions Nos. 499, 500, 501, and 504 of 1932 of this Court.

2. In order to understand these cases it is necessary to state a few facts. One Shaukat Ali left four sons, Abdul Hafiz, Abdul Jalil, Abdul Shakur, Abdul Jamil and one daughter Mst. Homera Bibi. He owned shares in several villages in Shahjahanpur and Pilibhit districts. Abdul Jamil, one of the sons of Shaukat Ali, died on 17th March, 1927, leaving his widow Mst. Hisina Begam, one son and five daughters After the death of Abdul Jamil, his three brothers and sister instituted four suits for profits in Rent Court against his heirs (Mst. Hasina Begam and Ors.). Two of these suits related to villages in which Abdul Jamil was a lambardar and they were institutes u/s 226 of the Agra Tenancy Act, while the other two related to villages in which he was only a co-sharer and they were instituted u/s 227 of the aforesaid Act. One of the pleas taken in defence by the heirs of Abdul Jamil was that there was a settlement between the sons and daughter of Shaukat Ali to the effect that the income of the entire property in both the districts should be handed over to Abdul Hafiz irrespective of the fact

whether one or the other of the brothers should be the lambardar in respect of any particular property and that Abdul Hafiz should pay Rs. 45 and grain monthly to each of his brothers and Rs 20 monthly and grain to his sister out of the income. In view of this settlement it was contended by the heirs of Abdul Jamil that the suits were not cognizable by the Rent Court. The trial Court did not accept this plea and all the four suits were decreed in part for the amounts found due. Against these decrees the heirs of Abdul Jamil preferred appeals to the District Judge. Before the learned District Judge both parties admitted the existence of the above-mentioned settlement with the result that he held that the suits were not within the jurisdiction of the Rent Court and he therefore directed that the plaints be returned to the Plaintiffs for presentation to the Court having jurisdiction. The Plaintiffs have preferred these four revision applications against the order passed by the learned District Judge in the four appeals.

3. Theheirrof Abdul Jamil (Hasina Begam and Ors.) had also instituted a suit for profits against his brothers and sister in respect of certain other villages. It was one u/s 226 of the Agra Tenancy Act and for profits for the period subsequent to the date of the death of Abdul Jamil. The defence of Abdul Hafiz, who was sued in his capacity of a lambardar, was that the profits should be calculated with reference to realizations and that on taking account it would be found that nothing was due. For reasons best known to them, Abdul Hafiz and others did not take in this case the plea that on account of the above-mentioned agreement the suit did not lie in the Kent Court. The suit was decreed in part. The heirs of Abdul Jamil preferred an appeal against this decision claiming that the suit should have been decreed in full. This appeal was heard by the learned District Judge along with the above-mentioned four appeals by Abdul Hafiz and Ors. and he held that because of the above-mentioned agreement this suit was also not cognizable by the Rent Court. Accordingly he returned the plaint for presentation to the proper Court. The heirs of Hasina Begam have preferred this appeal as an appeal from order but it has been treated by us as a second appeal.

4. We propose to deal with the second appeal of Mst. Hasina Begam first. The contention raised by the Learned Counsel for the Appellants is that the lower appellate Court was wrong in treating the Appellant's suit as connected with the other suits filed by the opposite-party and in returning the plaint since no plea about the want of jurisdiction had been taken by the Defendants in the case. It is true that the Defendants had not taken any plea in their written statement that the suit was not cognizable by a Kent Court but from the judgment under appeal it will be seen that before the learned District Judge both sides admitted the existence of the settlement mentioned above. The learned Judge in his judgment says:

It is admitted however,-vide robkar which forms part of appeal No. 186, that the parties have been treating the whole property as joint and that the family arrangement which governed them during the life-time of Abdul Jamil was that the income from property in both the districts namely Pilibhit and Shahjahanpur

should reach the hands of Abdul Hafiz only irrespective of the fact whether one of the brothers should be entered as lambardar in respect of any particular property or make collection thereof or the other and that Abdul Hifiz should continue to pay Rs. 45 cash and grain per month to each of his brothers and Rs. 20 cash and grain per month to his sister Homera Bibi out of the income.

5. This shows that before the learned District Judge both sides were agreed on this point. The four appeals from decrees obtained against the Appellants (heirs of Abdul Jamil) by the opposite-party (Abdul Hafiz and others! and the appeal of the Appellants were heard together. It is inconceivable that the Appellants could avoid the effect of the agreement in the case in which they were Plaintiffs when in the cases against themselves they persuaded the Court to return the plaint on that ground. In these circumstances we are of opinion that the learned District Judge was justified in considering the question of jurisdiction in this suit as well.

6. The next question to be considered is whether or not the decision of the learned District Judge returning the plaint of the Appellants in appeal No. 137 is correct. We are of opinion that in view of the admitted agreement which has been mentioned above the learned District Judge was right in holding that the suit did not lie in the Rent Court. Section 226 of the Agra Tenancy Act provides for suits by co-sharers against Jambardars while Section 227 governs suits by one co-sharer against another co-sharer for settlement of accounts. In the case before us it is not open to any of the heirs of Shaukat Ali to institute a suit for settlement of accounts and profits because of the existence of the family settlement. They cannot ask the Rent Cout for settlement of account for the simple reason that they have agreed at least by implication that there is to be no settlement of account as the entire income is to go in the first instance to Abdul Hafiz and he is to distribute it among the co-sharers in the shape of monthly allowances. Each of the sons of Shaukat Ali is to get Rs. 45 monthly and some grain and no more, while Abdul Hafiz is entitled to have all collections, by whomsoever made, brought to him to enable him to meet his own obligations to the co-sharer. So long as the arrangement is allowed to subsist the rights and liabilities of co-sharers are regulated by its terms. Such arrangement abrogates the right of suit u/s 226 or 227 of the Agra Tenancy Act. Unless it was meant to be of a permanent character so as to alter wholly or in part, the proprietary rights of the co-sharers it can be put an end to by any of them signifying his intention to revert to the ordinary mode of enjoyment of his share of profits. It is no more than the agreed mode of her enjoyment of common lands.

7. Another point taken by the Learned Counsel for the Appellants in appeal No. 107 was that the arrangement between the brothers and sister did not bind the heirs of Abdul Jamil and came to an end on his death, and as the suit related to profits for a period subsequent to his death, it was cognizable by the Rent Court. We find ourselves unable to agree with that. In our opinion, the settlement is binding on the heirs of the parties to it so long as it is not repudiated. "1 he Learned Counsel for the Appellants referred to the case of partners but there can

be no analogy between the two cases as in case of partners there is a special provision in Section 253 (clause 10) which provides that partnership would come to an end on the death of a partner Section 37 of the Indian Contract Act lays down that the death of one of the contracting parties does not put an end to the contract Where certain co-sharers agree to divide profits in a particular manner, the agreement is binding on their heirs until it is terminated. In the case before us the heirs of Abdul Tamil have not repudiated the settlement and it is therefore binding upon them.

8. For the reasons given above, we are of opinion that the decision of the learned District Judge returning the plaint to the Appellants was a correct one and accordingly we dismiss the appeal and evasions with costs.