

(1918) 07 CAL CK 0015
In the Calcutta High Court

Iswar Dalin and Others

APPELLANT

Vs

Girindra Kumar Nag by his father and Guardian Jatindra
Kumar Nag and Another

RESPONDENT

Date of Decision : 23-07-1918

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 3

Citation : 48 Ind. Cas. 726

Hon'ble Judges : Panton, J;Newbould, J

Bench : Division Bench

Judgement

1. The plaintiff in these suits is a purchaser of an 8-anna share of a certain estate. He brought the 16 suits out of which these appeals arise and others to recover his share of rent from the principal defendants making their co-sharers pro forma defendants. The first Court dismissed the suits, on the ground that no relationship of landlord and tenant existed between the plaintiff and the principal defendants. The lower Appellate Court has granted the plaintiff a decree for his share of the arrears of rent claimed against the pro forma defendants, on the finding that the full rent had been paid to the pro forma defendants by the principal defendants. In our opinion, on the facts found this decision is justified. It appears from the plaint that the plaintiff clearly asked in the alternative for a decree against the pro forma defendants, if it was found that they had realized the rent due to the plaintiff's share. It is contended that the prayer for this relief could not be joined to the prayer for the recovery of rent against the principal defendants, but in our opinion Order I, Rule 3, of the CPC provides for the joinder of such claims and it is a well-established practice to join such claims. For the defendants-appellants it is alleged that the plaintiff's only remedy is a suit for partition and that without that he is not entitled to recover any rent. It is said that there has been an arrangement between the different co sharers by which the pro forma defendants are in sole possession of certain plots of land and that such an arrangement cannot be disturbed by a rent suit of this nature. In the first place, we may remark that in the written statement of the pro forma

defendants no allegation of an amicable arrangement in respect of the different portions of the estate was alleged. In the next place, we observe that in a road-cess return submitted by the pro forma defendants they only asserted an 8-anna interest in the property in suit. When these defendants recover the whole rent asserting only an 8-anna interest in the superior right, they are obviously bound to make over half of the rent collected to the owners of the other half of the proprietary right. The real difference between the two lower Courts is that the Munsif has accepted the pro forma defendants' plea that this road-cess return, was filed by mistake, while the learned District Judge has disbelieved the story of mistake and held that it contained a binding admission. On these findings the decrees of the learned District Judge were right. We accordingly dismiss these appeals with costs.