

(1920) 06 AHC CK 0021
In the Allahabad High Court

Jawahar Bano and Another

APPELLANT

Vs

Shujaat Husain Beg and Others

RESPONDENT

Date of Decision : 17-06-1920

Acts Referred:

Citation : AIR 1921 All 367 : 58 Ind. Cas. 114

Hon'ble Judges : Sulaiman, J;Gokal Prasad, J

Bench : Division Bench

Judgement

1. These two connoted appeals are appeals by the defendants in Baits for profits u/s 165 of the Tenancy Act against their co-shares. It is admitted that the plaintiffs are entitled to a 1/6th share of the total profits.

2. Second Appeal No. 1296 arises out of a suit which was brought on the 21st of July 1916. The suit was decreed partly against Kazim Ali beg and partly against Musammats Jawahar Bano and Mumtaz Bano. Musammats Jawahar Bano and Mumtaz Bano appealed to the District Judge without making Kazim Ali Beg a party to the appeal. Kazim Ali did not appeal from the decree against him. No appeal or cross-objection was filed by the plaintiffs against Musammats Jawahar Bano and Mumtaz Bano.

3. Second Appeal No. 1293 arises out of Suit No. 12 of 1915 for profits by the same plaintiffs against the same set of defendants but for different years. In this case, also, a decree was passed against these two sets of defendants, but both of them appealed to the District Judge. After various remands, these three appeals were tried together by the District Judge and have been disposed of by one judgment, which, unfortunately, has caused some confusion. In the opinion of the District Judge, Kazim Ali was not liable for any share of the profits to the plaintiffs at all. On the other hand, he has found that Jawahar Bano and Mumtaz Bano had realised more than their share of the profits and were alone responsible to the plaintiffs. The result of his finding was this, that he allowed Kazim Ali's appeal in the second suit and exempted him altogether from all liability. He dismissed Jawahar Bano's and Mumtaz Bano's appeal, but, at the

same time, he has modified the decree of the first Court in both these suits and decreed the plaintiffs' claim for the amounts found due by the first Court as against Jawahar Bano and Mumtaz Bano. Only two appeals have been filed in this Court. No appeal has been filed by the defendants, Jawahar Bano and Mumtaz Bano, from the decree allowing the appeal of Kusrim Ali against them. In our opinion, when the District Judge was satisfied that it was Jawahar Bano and Mumtaz Bano alone who were liable to pay the plaintiffs' share of the profits, he had jurisdiction to modify the decree of the first Court and decree the plaintiffs' claim as against these two defendants only. It is true that Kazim Ali was not formally made a party in the appeal which had arisen out of the first suit. But, as the modification of the decree was to be in favour of Kazim Ali himself, who had been a party to the original suit, the defect of his not having been formally brought on the record in that appeal is not very material.

4. Great reliance has been placed by the learned Vakil for the appellants on the Full Bench case of Rangamlal v. Jhandu 11 Ind. Cas. 640 : 34 A. 32 : 8 A.L.J. 1111. In that case, in a suit brought by a Zemindar against a tenant for rent, the Court of first instance had decreed the claim for a much smaller amount than that claimed by the plaintiff. The plaintiff submitted to the decree and never appealed from it. The defendant-tenant appealed to the District Judge, challenging the decree. After a remand the District Judge was of opinion that the defendant was, in reality, liable to pay more to the plaintiff, and he, while dismissing the defendant's appeal, modified the decree of the first Court and granted the plaintiff a decree for a greater amount. The Full Bench in that case held that, although the words of Order XLI, Rule 33, were very wide and the Judge, strictly speaking, had jurisdiction to pass the decree which he had made, still there was not a proper exercise of jurisdiction by him in that case. It was pointed out that, in a case where there is no sufficient reason for a respondent neglecting either to appeal or to file objections, the Court will hesitate before allowing him to object at the hearing of the appeal. The case before us, however, is clearly distinguishable. In the present case, if we simply allowed the defendants appeal and dismissed the plaintiffs' suit as against them, it would be doing a great injustice to the plaintiffs, because they would be deprived of the amount to which they have been found entitled. The plaintiffs must have their decree for profits, and the only question for consideration before the District Judge was whether that decree should be against one set of defendants or against another set of defendants. When the Judge was of opinion that Kazim Ali, defendant, was really not liable to the plaintiffs for their profits, he exercised his jurisdiction very properly in directing that the defendants, Jawahar Bano and Mumtaz Bano, should be made liable for the whole amount. In Second Appeal No. 293, which arises out of the second suit, Kazim Ali was actually a respondent in the appeals before the District Judge and no defect of non-joinder can be urged in that case.

5. We think that the learned District Judge has acted within his jurisdiction in passing the decree which he has passed and we find no grounds for holding that

his exercise of jurisdiction, as conferred on him by Order XLI, Rule 33, has in any way been improper. Substantial justice has been done in this case. These appeals are without force and are hereby dismissed with costs.