

(1926) 07 PAT CK 0018
In the Patna High Court

Kirtyanand Sinha Bahadur

APPELLANT

Vs

Biswanath Jha and Others

RESPONDENT

Date of Decision : 02-07-1926

Acts Referred:

Citation : AIR 1927 Patna 44

Hon'ble Judges : Ross, J; Das, J

Bench : Full Bench

Judgement

Ross, J.—This is an appeal by the plaintiff or rather by one of two plaintiffs. A suit for rent was brought by Baja Kalanand Singh and Raja Kirtyanand Singh against a tenant. The suit was dismissed and an appeal was filed by both the plaintiffs. During the pendency of the appeal Raja Kalanand Singh died and an application for substitution of his heirs was made after his appeal had abated. The application was rejected and the appeal of Raja Kirtyanand Singh was dismissed on the ground that it had abated also.

2. The contention on behalf of the appellants is that he ought to have been given a decree for his share of the rent. The authorities are against this contention; see *Nepal Chundra Ghose v. Mohendra Nath Roy Chowdhury* [1904] 31 Cal. 707 and the Full Bench decision in *Guni Mahomed v. Moran* [1879] 4 Cal. 96 where it was laid down that where it has been arranged between co-sharers of an estate and their tenant that he shall pay each co-sharer his proportionate share of the entire rent, each co-sharer may bring a separate suit against the tenant for such proportionate share but in the absence of such an arrangement no suit can be maintained. Raja Kirtyanand Singh is not entitled to claim his share of rent from the tenant who pays his rent jointly to both the landlords and is entitled to a receipt from them both.

3. In the absence of any contract between the individual landlord and the tenant for payment of any share of the individual landlord separately, a separate suit by one of the landlords for his share of rent is not maintainable.

It was further contended by the learned advocate for the appellant that, as on the finding of the Subordinate Judge there is nothing to show that the interest of Raja Kirtyanand Singh was separate from that of Kalanand Singh, he is entitled to maintain the appeal as the representative of the deceased landlord. But this is not a case of a joint Mitak-shara family. There is no such allegation in the plaint and if this argument is accepted no question of abatement would ever arise.

4. The appeal must be dismissed with costs.

This decision will govern Second Appeal No. 666 of 1924 which is also dismissed with costs.

Das, J.

I agree.