

(1928) 03 AHC CK 0022
In the Allahabad High Court

Nanak Chand Singh

APPELLANT

Vs

Khubi and Others

RESPONDENT

Date of Decision : 26-03-1928

Acts Referred:

Citation : (1928) 03 AHC CK 0022

Final Decision : Disposed Of

Judgement

Mukerji Thakur, J.—This appeal must be allowed and the case sent back to the Court below for disposal according to law.

2. It appears that the plaintiff, who is the zemindar, brought the suit, out of which this appeal has arisen, for recovery of a certain amount of money as a fair rent on the allegation that the three defendants, who were brothers and who were tenants of the plaintiff in respect of other plots of land had in collusion with the patwari, taken possession of land which had never been leased out to them.

3. The suit succeeded in part in the Court of first instance. During pendency of the suit in the Court of first instance one of the defendants Khan Chand died. To start with his widow was brought on the record as his representative, Subsequently the widow gave birth to a posthumous son, who was named Padam Singh and later on, he was brought on the record. Although Padam Singh had been made party in the Court of first instance the decree omitted to describe Padam Singh as one of the defendants and described the mother Musammam Surja as one of the defendants. In filing his appeal the plaintiff overlooked the fact that the decree was wrong and evidently, the Counsel for the plaintiff not suspecting anything wrong, drew up the memorandum of appeal in terms of the decree, so far as the parties were concerned. In the Appellate Court, long after the period for appeal had expired, it was discovered that instead of Padam Singh his mother was a party. The plaintiff asked for amendment of memorandum of appeal and for extension of the period of limitation u/s 5 of the Limitation Act, so that the appeal against Padam Singh might be treated as filed within time. The learned Judge could not find his way to accept this prayer, with the result that

the appeal against Padam Singh stood dismissed, as barred by limitation. The learned Judge then had to try whether he should allow the appeal to proceed against the other two defendants-respondents. He came to the conclusion that the liability of the three original defendants was joint, and he could not hear the case against two of the original defendants alone.

4. In this Court it is contended that this view of the learned Judge was not right.

5. It has been held that the liability of tenants for the payment of the rent of any holding is joint and several--see Abdul Aziz v. Basdeo Singh 17 Ind. Cas. 89 : 34 A. 604 : 10 A.L.J. 183 which was followed in Parbhu Dayal Singh and Another Vs. Tirbhuwan Singh and Others, . The present case is really much stronger than the case of tenants. The three original defendants were in the position of trespassers and there is nothing in the language of Section 34 of the N.W.P. Tenancy Act, 1901, to preclude any one of several persons, occupying land without the permission of the landlord, from being sued for paying the compensation of fair rent. I am not prepared to call in question the exercise of the discretion of the lower Appellate Court as to the application of Section 5 of the Limitation Act. The result, therefore, is that the appeal as it stood before the lower Appellate Court, should be reheard, so far as the respondents Khubi and Tika are concerned. I allow the appeal, set aside the decree of the Court below and remand the appeal to it with a direction to proceed with the hearing in accordance with law. The respondents Khubi and Tika alone will pay the costs of the plaintiff-appellant. As the appellant had no justification for making Musammat Surja a party to this appeal he will pay her costs which will be assessed at one-third of the total costs incurred by the defendants-respondents.