

(1915) 11 AHC CK 0008
In the Allahabad High Court

Narain Das and Others

APPELLANT

Vs

Harakh Narain Lal and Others

RESPONDENT

Date of Decision : 11-11-1915

Acts Referred:

Citation : AIR 1915 All 396 : 31 Ind. Cas. 797

Hon'ble Judges : Piggott, J

Bench : Single Bench

Judgement

Piggott, J.—A preliminary objection has been taken to this appeal, on the ground that the suit is one of the nature cognizable by a Court of Small Causes and could not properly be brought before this Court in second appeal. On behalf of the defendants-appellants reference is made to Article 31 of the Second Schedule to the Provincial Small Cause Courts Act (Act IX of 1887). The question is whether the suit as framed, was one for profits of Immovable property belonging to the plaintiffs alleged to have been wrongfully received by the defendants. The case seems to me very much on the boundary line. It is almost covered by the ruling in Rameshar Singh v. Durga Das 23 A. 437 : (1901) A.W.N. 128 but there remains a doubt to my mind whether the money claimed in the present case was alleged in the plaint to have been "wrongfully received" by the defendants. The plaintiffs' case was that the defendants caught and sold certain fish under such circumstances that the plaintiffs were entitled to a rateable share in the sale-proceeds, which share the defendants withheld and wrongfully appropriated to themselves. I am not clear on the wording of the plaint that there was any allegation that the catching of the fish or selling of the same constituted any infringement of the plaintiffs' right. I incline, therefore, to the opinion that the objection is well founded and that as a matter of law, no second appeal lay in this case. I have thought it expedient, however, to hear the appeal on the merits. The point raised by the appeal can only be determined by a careful examination of the pleadings in the Courts below. The plaintiffs alleged that they were part-owners of a certain tank which had been divided on partition between themselves and other co-sharers, including some of the defendants. The

dispute was with regard to fishery rights. In the third paragraph of the plaint, it is alleged that the fish were ordinarily to be found in abundance in a portion of the tank situated in the share of the plaintiffs" alone. Indeed it was alleged that "at the time of fishing"--by which I understand, immediately any attempt was made to net the tank--all fish therein always collected together in a deep pool mentioned in the first portion of the said paragraph, which the plaintiffs alleged to be situated in the portion of the tank belonging to themselves alone. Nevertheless the plaint goes on to state" that whatever fish were captured out of this pool (presumably also any fish which might by some accident be captured in any other portion of the tank), were always disposed of for the benefit of all co-sharers. It is expressly pleaded that those defendants who were co-sharers in the proprietary rights over the tank had received their shares in the price of the fish caught in the plaintiffs" portion of the tank. The cause of action put forward was that during the year in suit, the defendants having colluded together fished the tank and appropriated whatever fish they caught, selling the same for their own benefit and withholding the plaintiffs" share. There is certainly no allegation in the plaint that fish were taken by the defendants from one part of the tank rather than from another. The case set up for the defendants, seems to me clear enough. They agree with the plaintiffs that there was a deep pool in the tank in suit in which fish ordinarily collected and in which alone they could be captured in any quantity. This deep pool, they allege, is situated in the portion of the tank allotted to them. They claim that this allotment entitles them to net this pool and appropriate any fish which they might find therein for their own benefit. Both expressly and by implication, they deny the plea of the plaintiffs that fish taken from the tank, were dealt with for the benefit of all the co-sharers in whatsoever part of the tank they might be captured. I do not say that the Court of first instance altogether misapprehended the point in issue; but it is clear that the attention of the learned Munsif was concentrated to a large extent on a question of fact which was only incidentally raised by the pleadings, namely, the question whether the deep pool, the existence of which both parties admitted, was situated in the portion of the tank allotted on partition to the plaintiffs or in the portion allotted to the defendant?. In substance, however, the learned Munsif upheld the case set up by the defendants. He held it proved that they had only caught fish in the portion of the tank allotted to them on partition and that they were entitled to appropriate to themselves any fish so caught. The" plaintiffs went on appeal to the Court of the District Judge. In their memorandum of appeal to that Court, they again raised the issue of fact which had been decided against them, by contending that the evidence on the record proved that the defendants had caught fish in the portion of the tank allotted to the plaintiffs" share. Nevertheless the fifth paragraph of their memorandum of appeal seems to me to raise clearly enough the plea upon which the plaint was originally based. The learned District Judge proceeded to state the question for determination in very general terms and I must confess to having found it somewhat difficult to follow portions of the argument on which he has based his decision. He points out that the case set up for the defendants might involve serious practical

difficulties in the event of each co-sharer attempting simultaneously with others to capture fish in the particular portion of the tank allotted to him on partition. He repudiates the contention that the particular deep pool in which fish ordinarily collected, can be regarded as the property of a particular co-sharer, so as to give that co-sharer exclusive right to any fish which he might capture therein. In substance, he seems to me to have affirmed the case set up by the plaintiffs, that any fish captured from the tank were dealt with as the property of all the co-sharers in whatever portion of the tank any particular fish might be captured. If this is a correct view of the judgment of the lower Appellate Court, there is obviously no force in this appeal, which is based on the plea that there should have been a specific finding as to the portion of the tank in which, or from which the defendants had captured the fish which formed the subject-matter of the suit. For these reasons I dismiss this appeal with costs.