

(1903) 05 CAL CK 0029

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 2083 of 1900

Parashmoni Dassi

APPELLANT

Vs

Nabokishore Lahiri

RESPONDENT

Date of Decision : 21-05-1903

Acts Referred:

Citation : (1903) 05 CAL CK 0029

Final Decision : Dismissed

Judgement

Brett and Mitra, JJ.—The Plaintiffs sued to recover from the Defendants an eight-anna share of the rent due from them for the years 1301 to 1304 in respect of a jote hold by them in mouzah Giriasa.

2. The Plaintiffs and one Promoda Debi are the proprietors of an one-anna odd ganda share in estate No. 136, Pergana Susang and their case is that under an amicable arrangement with their co-proprietors they and Promoda Debi are in possession of the whole of Giriasa, one of the mouzahs in the estate, as their khanabari. They further allege that they have collected an eight-anna share of the rents from all the tenants in the mouzah for nine or ten years down to 1301 and they therefore sue to recover rents for the years in suit.

2. The Defendants disputed the amount of jama claimed and further pleaded that Plaintiffs were not entitled to recover from them more than 1a. 10g 1c. 1ka. share of the rent, that being the share which they held in the estate.

3. The Munsif found that the jama of the Defendants was that stated by the Plaintiffs, but he accepted the latter plea put forward by the Defendants and gave the Plaintiffs a decree for an 1a. 10g. 1c. 1ka. share only of the rent against the Defendants.

4. On appeal the Subordinate Judge set aside the judgment and decree of the Munsif and decreed the Plaintiff's claim with casta. The Defendants have appealed.

5. A preliminary objection was taken u/s 153(a) of the Bengal Tenancy Act to the competency of the appeal on the ground that the rent which the Plaintiff sought to recover was under 100 rupees and the judgment of the Full Bench in the case of *Narain Mahton v. Manofi Pattuk* ILR (1890) Cal. 489 laid down that the provisions of that section applied to the case of rent payable to one of several co-sharer landlords who collected his share of the rent separately. In this case, however, the question raised and determined was not merely the amount of rent payable to the co-sharer, but whether he had a title to recover the eight-anna share of the rents of mouzah Giriasa as he alleged. This comes under the exception mentioned in the section and the objection fails.

6. In support of the appeal the learned vakil for the Appellants relies on the second part of Section 78 of the Land Registration Act of 1876 and contends that under its provisions the Defendant is not bound to pay any co-sharer more than the amount which bears the same proportion to the whole of his rent as the extent of the interest in respect of which that co-sharer is registered bears to the entire estate. The Plaintiff admittedly is only registered as proprietor in respect of an 1a. 10g. 1c. 1ka. share in estate No. 136, in which mouzah Giriasa is situated and the learned vakil contends that the Munsif was right in holding that the Plaintiff could only--recover that share of the rent from the Defendant and that the decision of the Subordinate Judge to the contrary was wrong. He further relies on the provisions of Section 42 of the same Act and contends that if the Plaintiff by any arrangement with his co-sharers came into possession of an eight-anna share of mouzah Giriasa, he was bound to have had his name registered in respect of that share in that mouzah before he could recover an eight-anna share of the rents from the tenants. The contention appears not to have been raised in any suit before and there can be no doubt that if it be sound, its effect would be very far reaching in Bengal, where arrangements similar to that relied on by the Plaintiff are very common. "We do not, however, consider that in this case we are called on to determine the broad proposition which has been put forward. Both the Lower Courts have found that there was an amicable arrangement between the co-sharers by which the Plaintiffs were placed in possession as their *khanabari* of an eight-anna share of mouzah Giriasa and that they collected an eight-anna share from the tenants for eight or nine years up to 1301. The Munsif held, relying on a document produced by the Defendant, that in that year there was a fresh settlement between the Plaintiff and Defendant, by which the Plaintiff agreed thenceforward to collect only his registered share of the rent, but the Subordinate Judge has found that document not to be genuine and has held that there was no such fresh settlement. With that finding we cannot interfere.

7. The Act requires the registration by the various proprietors of their share in the estates only and does not seem to us to contemplate a registration of shares in separate mouzahs in the estates and we hold therefore that the provisions of Section 42 of the Land Registration Act have no application to the case of a co-sharer who, like the Plaintiff, has, by an amicable arrangement between the co-

sharers, been placed in possession of a larger share than his registered share in some mouzahs and of a less share or no share in others, when the total interest which he holds in all the mouzahs represents his registered interest in the whole estate. Section 12 of the Partition Act clearly contemplates that such a partition by amicable arrangement may be made.

8. Whether the tenants would be bound without their consent by such an arrangement is not a question which arises in this case, for it is evident that the Defendant and other tenants acquiesced in the arrangement and paid rents in accordance therewith for eight or nine years, prior to the period for which the rents in suit are claimed. And the Defendant having so acquiesced, we are of opinion that he is now debarred from disputing the Plaintiff's right to a half-share of the rent and from relying on the provisions of Section 78 of the Land Registration Act.

9. In this case a lessee of the registered proprietor is in possession of the remaining share of the estate and he is clearly endeavoring by setting up the Defendant to put forward his defence in this case to annul the previous amicable arrangement among the co-sharers.

10. We hold therefore that the judgment and decree of the Subordinate Judge is right and dismiss the appeal with costs.