
(1913) 01 AHC CK 0027
In the Allahabad High Court

Prohit Basant Lal and Another	Vs	APPELLANT
Nurul Hasan		RESPONDENT

Date of Decision : 30-01-1913

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33

Citation : 18 Ind. Cas. 530

Hon'ble Judges : Tudball, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Tudball, J.—The facts out of which this appeal has arisen are as follows: One Prohit Har Sarup was the lambardar of a village and he gave a lease to the plaintiff-respondent, Nurul Hasan. Under the terms of the lease, it was the duty of the lessor to pay the Government demand for revenue. In the years 1312, 1313 and 1314, the lessor apparently failed to carry out this term of the agreement. The lease was subsequently set aside on the suit of one of the co-sharers. Nurul Hasan then brought the suit, out of which the present appeal has arisen, to recover the sum of money paid to the Government as revenue. He impleaded all the co-sharers. After an appeal and a remand, the Court of first instance gave a decree to the plaintiff not jointly as against all the co-sharers, but for specific sums against them separately. The present appellant, Prohit Basant Lal, is the representative-in-title of the original lessor, Har Sarup. Four separate appeals were brought by nine of the defendants in respect of only the sums which had been decreed against them. One appeal was by two co-sharers, Mahabir Prasad and Hira Lal, one by Kesho Saran, Mulchand, Raghunath Saran and Bhagwan Das, one by Chiranji Lal and one by Basant Lal and Musammat Rup Dei, the present appellants. In the first three appeals, Basant Lal was made a respondent together with the plaintiffs and in the appeal of Chiranji Lal, in addition to Basant Lal, the appellants in the two connected appeals were also made respondents. The remaining 19 co-sharers against whom specific sums had been decreed filed no appeals and were not made parties to these four appeals.

The lower Appellate Court came to the conclusion that Basant Lal alone was responsible to the plaintiff, Nurul Hasan, for the total sum due to him. It delivered one judgment to cover all four appeals. In the case of the first three appeals, it allowed the appeals and in the case of Basant Lal's appeal it dismissed the appeal, but it went further than this. It modified the decree of the first Court and granted the plaintiff a decree against Basant Lal alone for the total sum due and dismissed the suit as against all the co-sharers, including those who had not appealed and were not parties to the appeal. It purported to do this under the power granted to it under Order XLI, Rule 33 of the Code of Civil Procedure.

2. Basant Lal and Musammat Rup Dei have appealed only in their case (Appeal No. 41 of 1911 in the Court below). The point taken is that the lower Appellate Court could not and ought not to have passed a decree against the present appellants in respect of that portion of the plaintiff's claim, which had been decreed against the defendants, who submitted to the decree aforesaid and who were no parties to the appeals either as appellants or respondents. In my opinion, the plea taken has great force. Basant Lal has submitted to the decree of the Court below, which made him liable for the sums decreed against those persons who had appealed to the Court below. One cannot lose sight of the fact that the other nineteen co-sharers, against whom the Court of first instance had passed separate decrees for specific sums, which sums did not form the subject-matter of any of the appeals to the Court below, had submitted to the decrees and had preferred no appeals. The plaintiff, moreover, remained content with the decree as against those nineteen co-sharers. He neither filed objections nor an appeal. It is, therefore, clear that the observations of this Court in *Rangam Lal v. Jhandu* 8 A.L.J. 1111, 34 A. 32, 11 Ind. Cas. 640 apply with full force to the circumstances of the present case. It has been urged that the decree against all the co-sharers proceeded on a common ground and it is open to one of them to appeal against the whole decree and for the Court below to modify the decree on appeal as it has done, but in the first place, the decree of the original Court declared the separate liabilities of the defendants for separate specific sums of money. There was no joint decree. There were, as a matter of fact, separate decrees against several sets of defendants. There was no appeal against the whole decrees. The appeals before the Courts below were appeals only against those portions of the original decree which affected the appellants in the Court below. I see no possibility of distinguishing the present case from that of *Rangam Lal v. Jhandu* 8 A.L.J. 1111, 34 A. 32, 11 Ind. Cas. 640 mentioned above. The remarks to be found on pages 1114 and 1116 of the report apply with full force to the present case. The lower Court ought not to have disturbed the decree of the Court of first instance as against the defendants who had submitted to it. The result is that I allow the appeal to this extent that that portion of the decree of the Court below, which has held Basant Lal responsible for the full amount of the plaintiff's claim, is set aside. The appellants' appeal in the lower Appellate Court ought simply to have been dismissed. The decrees in the connected appeals have

become final. The decree of the Court of first instance as against the present appellants and as against those defendants who did not appeal to the Court below will be restored. The plaintiff-respondent will get his costs of the Appeal No. 41 of 1911 in the Court below. The appellants will have their costs of this appeal including fees on the higher scale from the plaintiff, Nurul Hasan.