

(1899) 12 CAL CK 0010
In the Calcutta High Court

Rajnarain Mitter

APPELLANT

Vs

Ekadasi Bag

RESPONDENT

Date of Decision : 06-12-1899

Acts Referred:

Citation : (1900) ILR (Cal) 479

Hon'ble Judges : Wilkins, J; Rampini, J

Bench : Division Bench

Judgement

Rampini and Wilkins, JJ.—These are two analogous rent suits.

2. In one the plaintiff is Mr. Mitter, Receiver, appointed by this Court to the Paikpara estate. Ekadasi Bag is the principal defendant, and Sarat Chundra Singh is proformed defendant. In the other, Sarat Chandra Singh is the plaintiff, Ekadasi Bag, the principal, and Mr. Mitter, the proformed defendant.

3. The facts are that the defendant Ekadasi is a tenant of the Paikpara estate, Mr. Mitter is the Receiver and Kumar Sarat Chandra Singh, a transferee of a share in the estate. Formerly, it is said, Ekadasi held two jamas, one of 5 bighas odd, and the rent of which was Rs. 16 odd, and the other of 39 bighas odd, the rent of which was Rs. 131 odd. The jamas were consolidated and the defendant paid an annual rent of Rs. 146 odd to the co-sharers jointly. Now, the estate has been partitioned by the High Court, and the jamas allotted to the different shares. The jama of Rs. 131 has fallen to the share of which Mr. Mitter is the Receiver, while the jama of Rs. 16 odd has fallen to the share of which Kumar Sarat Chandra Singh is the transferee.

4. Mr. Mitter and Kumar Sarat Chandra Singh now bring these two suits after notice to the defendant for arrears of rent due up to Baisakh 1303 and seek to collect from the defendant the rents due to them separately.

5. The Munsif held that the plaintiffs cannot recover, as there has been no decree for apportionment, but he gave Mr. Mitter a decree for the amount of rent admitted by the defendant to be due to the whole estate.

6. The Subordinate Judge dismissed both suits entirely, holding "that the suits were not suits for apportionment of rents, but were only for splitting the defendant's jama into two for convenience of the plaintiffs."

7. Mr. O'Kinealy for the Plaintiffs urges that there is no difference between a suit for apportionment of rent and one for splitting a jama; that the plaintiffs are entitled to have the rent apportioned or the jamas split, if they make all the parties interested parties to the suits, as has been done in these cases, and consequently that the plaintiffs are entitled to have the suits remanded for trial.

8. Babu Lal Mohan Das for the Respondent maintains that the defendant's rent cannot be apportioned in these suits; that even if this can be done, the plaintiffs are not entitled to an apportionment of the arrears due as the decrees for apportionment, if the plaintiffs obtain them, can only affect the future, and not the past. Finally, he contends that u/s 188, the plaintiffs, until they obtain decrees for apportionment, must collect the rent jointly.

9. It would appear to us that there is no reason why these suits should be dismissed. The plaintiffs have from the first asked for the apportionment of the defendant's rent.

10. All parties interested have been made parties to the suits. There is no valid reason that we can see why the plaintiffs should not now have the defendant's rent apportioned.

11. Then, we are also of opinion that apportionment may take place of the sum due for arrears, as well as with regard to the future. As Mr. O'Kinealy puts it, the apportionment may take place with regard to the future, as well as of all the defendant's present obligation.

12. And in the two cases--Sreenath Chunder Chowdhry v. Mohesh Chunder Bundopadhyaya (1878) 1 C.L.R. 453, and Ishwar Chunder Dutt v. Ram Krishna Dass I.L.R (1880) 5 Cal. 902, it would seem to us that arrears of rent, as well as apportionment of future rent, were sued for.

13. These cases are no doubt of date anterior to the passing of the Tenancy Act; but Section 188 would seem to us to present no difficulty. It lays down that joint landlords can only sue for the rent collectively or by common agent. But it does not prescribe that the relation of joint landlords is to endure for ever. It does not prohibit joint landlords from ceasing to be joint, or preclude them from suing for their shares of the rent separately, when they have ceased, or wish to cease, to be joint landlords. When a defendant is subject to a joint liability, it would without doubt be unjust to allow him to be sued by one of his joint creditors, who could not release him from his liability to his other creditors. But there would seem to us to be no reason why the creditors should not be allowed to sever their mutual relations, and sue their debtor separately for their shares of the debt, provided this be done in such a manner as to free the debtor from all further liability to any of them. This is being done in these suits. Mr. Mitter sues

for the share of the rent due to the share of the estate of which he is a Receiver, and Kumar Sarat Chandra Singh is a party. If Mr. Mitter gets a decree, Sarat Chandra Singh can never sue the defendant for more than his own share of the rent; for any decree which Mr. Mitter may obtain will bind him as regards the amount of rent decreed, as well as the tenant defendant. Mutatis mutandis, the same will be the effect of any decree which Kumar Sarat Chandra Singh may obtain in his suit.

14. For these reasons we decree these appeals and remand the suits to the Lower Appellate Court, who will remand them to the Court of First Instance for trial, and for apportionment of the defendant's rent in respect both of the arrears alleged to be due and the future. This order will carry costs of these appeals.