

(1926) 03 AHC CK 0052
In the Allahabad High Court

Ram Autar Chaudhuri and Others

APPELLANT

Vs

Kashi Chaudhuri and Others

RESPONDENT

Date of Decision : 26-03-1926

Acts Referred:

Citation : AIR 1926 All 544 : 95 Ind. Cas. 48

Final Decision : Disposed Of

Judgement

1. These two second appeals arise out of two suits brought by the plaintiffs-respondents against the defendants-appellants for their ejectment from two different holdings. The defendants-appellants were originally non-occupancy tenants of the holdings and the plaintiffs-respondents were their landlords. Subsequently the defendants acquired a share in the mahal in which both the holdings are situated. The plaintiffs are suing to eject them. The defence is that u/s 194 all co-sharers must join in a suit for ejectment, at any rate, unless there is a lambardar who represents all the co-sharers. It is admitted that there is no lambardar in this mahal.

2. The first Court held that the defence was valid. The Additional District Judge of Gorakhpur has dissented from this finding and allowed ejectment. The grounds for his decision are briefly as follows: The defendants having obtained possession as tenants cannot now claim that they occupied the holdings other wise than as tenants. With this conclusion we agree. A tenant cannot deny the title of his lessor during the subsistence of the tenancy.

3. The Additional District Judge, however has gone on to hold that the defendants, being tenants in respect of the land in question, cannot claim any right whatever as co-sharers, and in particular they cannot claim the right given to co-sharers by Section 194 that no tenant shall be ejected except with their concurrence in the suit. With this we cannot agree. The Additional District Judge appears to have applied the legal maxim that no one can at the same time be tenant and landlord: *nemo potest esse tenens et dominus*. But the defendants represent two different juristic units. Alone they are tenants. Along with the

plaintiffs they are the landlord. The same juristic entity is not landlord and tenant. To hold otherwise would in effect, mean that a tenant could not purchase a proprietary share in the mahal in which he was tenant, and that if he did so, he could obtain no advantage from doing so, or at least could not obtain the particular advantage described in Section 194. It appears to us clear that Section 194 will prevent the plaintiffs obtaining a decree in the present suit. Nor again does there appear to be any injustice accruing from this fact. If two co-sharers are not agreed as to the eviction of a tenant then the tenant must stay on, and it does not appear to us to make much difference that the tenant happens to be one of the co-sharers themselves. We may mention that no special custom has been set up whereby the plaintiffs alone are entitled to collect the whole rent of these holdings. A share in their mahal was sold in execution to the defendants. The plaintiffs originally had no co-sharers and naturally collected the whole rental. The right to collect the whole rental disappeared when a share in the mahal was sold to the defendants. For the above reasons we allow these appeals and dismiss both suits with costs to the defendants throughout including costs in this Court on the higher scale.