
(1935) 01 AHC CK 0031
In the Allahabad High Court

Sheo Dihal Dube and Others

APPELLANT

Vs

Moti Lal Ahir and Others

RESPONDENT

Date of Decision : 30-01-1935

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 23

Citation : AIR 1935 All 568 : 157 Ind. Cas. 522

Hon'ble Judges : Ganga Nath, J

Bench : Division Bench

Judgement

Ganga Nath, J.—This is a plaintiff's appeal and arises out of a suit brought by them against Moti Lal, defendant. The plaintiffs' case was that the land that was in occupation of the defendant was their sir. The defendant contended that the plaintiffs alone had no right to bring the suit. The other cosbarcrs were also implicated as defendants. The trial Court found in favour of the plaintiff and decreed the suit. An appeal was preferred to the Collector who found in favour of the defendant and held that the plaintiffs were not the sole owners of the sir and that it belonged, to the plaintiffs as well as other defendants co-sharers and the plaintiffs had no right: to bring" the suit alone. An appeal was preferred to the learned District Judge who dismissed the appeal on the ground that, as there was no question of proprietary title, no second appeal lay. He also recorded a finding that the land in dispute belonged solely to the plaintiffs and the plaintiffs alone "had a right to bring the suit. An appeal has been preferred by the plaintiffs against the decision of the lower appellate Court. The chief point for consideration in this appeal is whether any question of proprietary title is involved in it or not. As already stated, the contention of the defendant was that the plaintiffs alone were not the sole proprietors of the whole of the sir for which rent was claimed. The defendant stated that the plaintiffs as well as the other defendants were cosharers in the sir. Defendant 1 (the tenant) admitted the plaintiffs' right in the sir in suit only partly. The plaintiffs' proprietary title was denied by the defendant to the extent of the share which, as alleged by him belonged to the other cosharers. So far as the share of the other cosharers was

concerned and in respect of which the plaintiffs' title was denied there remained a question of proprietary title between the plaintiffs and defendant 1. The question of the ownership of a sir land is a question of proprietary title. This point I was considered in *Gambhir Singh v. Surendra Singh* 1930 All. 455. I There a suit for recovery of arrears of rent was dismissed by an Assistant Collector on the ground that the plaintiffs had no rights in the sir land,, but, on appeal, the Collector, holding: that plaintiffs and zamindar-defendants were jointly proprietors of the sir land and that therefore the plaintiffs were entitled to sue, remanded the suit under Order 41, Rule 23, Civil P.C. It was held that an appeal lay from such appellate decree of the Collector to the District Judge u/s 243, Tenancy Act. It was observed that an appeal would lie from an appellate decree of a Collector u/s 243, Tenancy Act, because the proprietary rights had been in issue between the parties in the first appellate Court and was certainly in issue in appeal. Therefore there can be no doubt that there was a question of proprietary title in issue in this suit and an appeal lay to the learned District Judge. As regards the title of the plaintiffs, as already stated, the learned Judge has found that the plaintiffs were the sole proprietors of the sir in dispute and were "entitled to sue alone for the rent. In this connection it may also be mentioned here that the land in dispute has been recorded as. khudkasht of Rudra Prasad, predecessor in title, of the plaintiffs. It was Rudra Prasad who gave the land in dispute under a lease to Wahid Ali" for seven years and after ejecting him on the expiry of the term of the lease let these plots on seven years" lease to Ram Harakh, father of defendant 1 on 22nd September 1925. Defendant 1, thus took the land from the predecessor in title of the plaintiffs as his tenant. The plaintiff therefore had" every right to claim rent from him, and to bring a suit for it. It is therefore ordered that the appeal be allowed with costs, the decree of the lower Court be set aside and the plain-tiffs" suit be decreed with costs in all Courts.

2. Permission to file a Letters Patent appeal is rejected.