

(1929) 12 PAT CK 0008
In the Patna High Court

Shibo Singh and Others

APPELLANT

Vs

Janki Prasad Singh and Others

RESPONDENT

Date of Decision : 03-12-1929

Acts Referred:

Evidence Act, 1872 — Section 13

Citation : AIR 1930 Patna 231

Hon'ble Judges : Das, J;Adami, J

Bench : Full Bench

Judgement

Das, J.—The appeals arise out of suits for produce rent, the tenants being the appellants before us. It appears that the plaintiffs, who are the landlords, have $\frac{1}{35}$ the interest in the holdings and this has encouraged the argument before us that the same individuals are substantially both plaintiffs and defendants in the suits and that the suits should have been dismissed on that ground.

2. Reliance has been placed on various cases, of which we may mention one *Rustomji v. Purshotamdas* [1901] 25 Bom.L.R. 227. In that case the plaintiff sued a partnership firm on a certain advance alleged to have been made by him to the partnership. Nagin Das, son of the plaintiff was one of the partners of the defendant firm and it was contended on behalf of the defendant firm that the advance was in fact made by Nagin Das in the name of his father and that the advance being an item in the partnership account, the suit as framed did not lie.

3. It was found as a fact that Nagin Das and his father were members of a joint family, so that it followed that Nagin Das was interested in the money which has actually advanced by his father to the defendant firm. It was pointed out in the judgment of the High Court that the Common Law rule was firmly established that where an individual was a common partner in two houses of trade no action could be brought by one house against the other house upon any transaction between them while such individual was a common partner. But it was also pointed out that, while at Common Law the rule led to the result that the suit

had to be dismissed, the Courts of Equity surmounted the difficulty by working out the rights of the parties. Now if this position be accepted, then there is no difficulty in rejecting the contention of the defendants. It is quite true that the plaintiffs are interested in the holdings to the extent of a definite share therein; but it is not necessary for the landlord to sue all the tenants unless the landlord desires to obtain what is known as a rent decree. It is therefore not illegal for the landlords to frame their suits as against some only of the tenants. It is quite, that if some of the tenants are left out, those tenants against whom decrees are obtained are entitled to sue the tenants left out for contribution. In this case the plaintiffs have cited themselves as defendants, but no difficulty arises, for the rights of all the parties are capable of being adjusted in this litigation and have in fact |been adjusted by he Court. The position is that the plaintiffs as landlords are entitled to got from the whole body of tenants including themselves 20 seers of produce rent out; of every maund, they are also entitled to 12 seers out of every 20 seers left as the tenants" share of the produce, that is to say, they are entitled to receive 32 seers out of every maund of produce in the two capacities. Now this being the position, it is not difficult for a Court; of fact to adjust the rights of the parties. In my opinion, therefore, the suits cannot fail on the ground which is advanced before us by Mr. Nirsu Narain Sinha.

4. It was then urged that the finding of the lower appellate Court that the plaintiff has recovered 24 seers, but not 32 seers, out of every maund is an absurd one and ought to be disregarded by us. I may mention that the tenants defended the suits on the ground that the landlords have recovered the whole of 32 seers to which they wore entitled. It is true that the plaintiffs pretended that they had recovered nothing at all from the tenants. The lower appellate Court on a review of the evidence, has been unable to accept either the case of the plaintiffs or that of the defendants; but in my view it is open to the Court of fact to arrive at a conclusion of its own. But the objection of Mr. Nirsu Narain Sinha goes further than this. He contends that it is unlikely that the plaintiffs would have taken their share of the produce as tenants, their share of rent recoverable by them from themselves and neglect to take their share of the rent from the contesting defendants. However improbable the case may be, the question is one of fact and it is impossible to say that in arriving at the conclusion at which the lower appellate Court has arrived, it has committed an error of law.

5. The last point is on the question of produce. Now the lower appellate Court rejected the khesras upon which the plaintiff relied, but it refers to a decision in a case regarding lands of similar quality but not between the same parties. Mr. Nirsu Narain Sinha contends that the judgment upon which the lower appellate Court relies is inadmissible in evidence. I am unable to take this view. The judgment is undoubtedly admissible u/s 13, Evidence Act for what it is worth. The weight to bet attached to the document is not a question for us; it is entirely a question for the Courts below. In my judgment, therefore, there is no error of law in the decision of the lower appellate Court, and I must therefore dismiss these appeals with costs. There will, however, be only one hearing fee, that in

appeal No 1495.

Adami, J.

I agree.