

(1925) 06 BOM CK 0002

In the Bombay High Court

Case No : Civil Application for Revision No. 294 of 1924

Vagha Jesang

APPELLANT

Vs

Jagjivan Amritlal Desai

RESPONDENT

Date of Decision : 24-06-1925

Acts Referred:

Provincial Small Cause Courts Act, 1887 — Section 25

Citation : AIR 1925 Bom 542 : (1925) 27 BOMLR 1107 : 90 Ind. Cas. 558

Hon'ble Judges : Norman Macleod, J;Coyajee, J

Bench : Division Bench

Judgement

Norman Macleod, Kt., C.J.—These are applications entertained u/s 25 of the Provincial Small Cause Courts Act in suits filed by the Desais of the village of Vinzol. The -Plaintiffs were not entitled to claim the whole of the rent, They are sharers to the extent of fourteen annas and seven and a half pies. The sharer entitled to the balance is not a party to the proceedings. The plaintiffs are claiming their share of what is payable by the tenants, at a higher amount than has been paid in the previous years, on the ground that although the bigha in those cases may be the same, the tenants are liable to pay additional rent for certain excess land in their occupation. It would not, therefore, be, strictly speaking, a suit for enhanced rent, but merely a claim that the tenants should pay the proper rent for the lands they are cultivating, the rate itself being admitted, But since these tenants have been paying certain rents in past years for the land in their occupation, it is not open to one co-sharer to file a suit seeking to recover from the defendants a greater amount of rent than has been paid in the past. Whether the claim made is one for enhanced rent, or a claim for rent for excess land taken in occupation by the tenants, the principle is the same, that the question must not be at the mercy of one sharer, but, if at all, must be decided between the tenants and the whole body of sharers entitled to claim rent as landlords.

2. On these grounds we think the Judge was wrong in entertaining the claim of

the plaintiffs who were entitled to only fourteen annas and seven and a half pies share of the increased rent from the defendants. The defendants would still be liable to pay the balance of the rent to the co sharer, and again they might be harassed by a claim for more rent-on some entirely different principle. If higher rents are to be asked for, then they can only be asked for by the whole body of sharers (see Balkrishna v. Moro I.L.R.(1896) 21 Bom. 154).

3. We, therefore, make the rule absolute and amend the decree by directing that the amounts admitted by the defendants as due to the plaintiffs for rent be substituted for the amounts decreed. The applicants will be entitled to their coats of the rule in all these applications,