

Sohanpal Singh Vs. Special Manager Court of Wards of the Estate of Amir Begam

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Court : Allahabad

Decided On : Oct-08-1936

Reported in : AIR1937All113; 166Ind.Cas.889

Appellant : Sohanpal Singh

Respondent : Special Manager Court of Wards of the Estate of Amir Begam

Judgement :

Bennet, J.

1. This is a second appeal by a defendant lambardar against a decree for profits which was increased by the lower appellate Court, the learned District Judge of Bulandshahr. The suit was brought for profits for certain years against the lambardar under Section 226, Agra Tenancy Act of 1926. The first point which was argued was that the lower appellate Court was wrong in decreeing the suit for the profits arising from sir and khudkasht of other co-sharers. It was argued that under certain rulings of this Court such as Koka v. Chunni : AIR1927 All623 a lambardar cannot sue as a lambardar one or more co-sharers for any sum due from them by reason of their holding as sir or khudkasht excess land. That decision followed a case in Bishambhar Nath v. Bhullo (1912) 34 All. 98 and dissented from a case in Ganga Singh v. Ram Sarup A.I.R. 1916 All. 155. It appears to me however that

accepting the law as laid down in this ruling, *Koka v. Chunni* : AIR1927 All623 , the present case is not governed by that consideration.

2. The lambardar in the present case receives a remuneration of 5 per cent on his collections of the profits of the mahal. Now a part of the profits of the mahal arises from the cultivation of sir and khudkasht by co-sharers and where such cultivation is in excess of the share then a collection of the excess at a certain fixed rate has to be made from those co-sharers. The person who undertakes the making of this collection and also the collection of rents from tenants is the lambardar and he obtains a remuneration for this work. When a lambardar finds that a certain co-sharer will not pay the excess due from him for his excess cultivation of sir and khudkasht then in my opinion it is the duty of that lambardar to inform the co-sharers who may be entitled to bring a suit. If he does not attempt to make any collections of this nature and does not inform the other co-sharers, how are these co-sharers to become aware that any particular co-sharer has made a default of this nature? The attitude taken up in the grounds of second appeal on behalf of the lambardar is that this work is no concern of his whatever and that the co-sharers who are entitled to receive any sum from other co-sharers on this account, such as the plaintiff may find out for themselves what excess is due to them and may bring their suit without his assistance. I do not think that this is a reasonable attitude for a lambardar to take up, and accordingly I think that the Court below was correct in holding that it was part of the duty of the lambardar to make collections from co-sharers on this account.

3. The co-sharers in the present case are in a greater difficulty because the lambardar has filed no accounts. The Court below therefore on this ground and on the ground that the collections were low directed that profits should be on gross rental. The grounds of second appeal argue that the collections were about 75 per cent. This is not correct. The collections were Rs. 975 out of Rs. 1,580 as found by the lower appellate Court and this percentage is 61.7 per cent which is not at all about 75 per cent. It was further argued that the Court below was not correct in allowing future interest at 12 per cent per annum. Under Section 225(2), Agra Tenancy Act, a co-sharer is entitled to receive interest on arrears of profits at 1 per cent per mensem. I see no reason why this rate should not apply until payment

after the decree. In ground No. 6 it was argued that the lower appellate Court had erred in omitting collection charges from the account, but learned Counsel failed to show from the figure in the decree of Rs. 282-5-6 decreed to the plaintiff that there was no deduction of the 5 per cent collection dues. No case has been made out for the appellant. The appeal is therefore dismissed with costs. No ground has been made out for a Letters Patent appeal. Permission is therefore refused.

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