

Ram Narain Vs. Jai Gopal

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SooperKanoon Citation : sooperkanoon.com/453581

Court : Allahabad

Decided On : Dec-06-1944

Reported in : AIR1945All219

Appellant : Ram Narain

Respondent : Jai Gopal

Judgement :

Sinha, J.

1. This is a plaintiff's appeal. The suit was one for profits under Section 226, Agra Tenancy Act of 1926, against the lambardar for the years 1341 to 1343 fasli. The plaintiff did not claim any specific amount. There were various defences raised, but the one with which we are concerned in this appeal, is that the defendant was not responsible for part of the collections, which had been made by other cosharers. Both the Courts below gave effect to this plea and decreed the claim for Rs. 257-11-0. The plaintiff has come in second appeal to this Court and his main contention is that the defendant, as a lambardar was liable for the collections made by the other cosharers in excess of their legal rights. This appeal came up originally before a learned single Judge, who has referred it to a bench of two judges. The learned Counsel for the appellant has taken his stand on the duties of a lambardar, as understood under the Land Revenue Act. Two of those duties are:

(a) to collect the Government demand of every description and to pay the same promptly to the person authorised to receive it;

(b) to collect rents and other dues from tenants and otherwise act on behalf of the other cosharers in an undivided mahal or in the common land of 'the mahal, thok or patti of which he is the lambardar on the conditions laid down in Section 265, Agra Tenancy Act.(Vide Rule 232).

2. The expression which falls for consideration is 'otherwise act on behalf of the other cosharers in an undivided mahal or in the common land of the mahal.' The earliest case on this question is the case in *Bishambhar Nath v. Bhola* ('11) 34 All. 98. The facts of the case were briefly these: The plaintiff was a lambardar and the defendants were cosharers. The defendants held sir and khudkasht in excess of their share, i.e., the income from these land was greater than their share of profits. The plaintiff sued for the excess due to himself as well as for that due to the other cosharers. Their Lordships, Sir George Knox and Griffin JJ. dismissed the suit for the excess. They affirmed the view of the learned Judge that the plaintiff could only sue as a cosharer for the amount of his own share and could not sue for profits due to other cosharers. They expressed their own view in these terms:

It it urged before us that the lambardar must be deemed to be an agent appointed by the cosharers to act on behalf of them all. We know of no authority derived from either statute or customs which confers such a power upon the lambardar, and we do not think that the words contained in Section 194 can be strained into holding this meaning.

3. It must be clearly borne in mind that that was a case of the lambardar himself coming to Court as a plaintiff. A perusal of the report shows that the basis of the plaintiff's argument was that the lambardar was the appointed agent under the Act and he was, as such, entitled to claim not only his share, but also the shares of the other cosharers. This contention their Lordships specifically repelled. This case was considered by a Full Bench of this Court in *Gulzari Mal v. Jai Ram* ('14) 1 A.I.R. 1914 All. 104. In so far as 34 ALL. 981 had held that a lambardar was not the agent of the other cosharers, their Lordships in the Full Bench disagreed with the view. Say their Lordships at p. 445:

Reliance has been placed upon the case in 34 All. 981.... We need express no opinion upon this case save to this extent that, if it was intended by the learned Judges to lay down as a matter of law that no suit can be brought by the lambardar in a lambardari village without joining all the other cosharers, we cannot agree with the decision.

4. The next case is the case in *Ganga Singh v. Ram Sarup* ('16) 3 A.I.R. 1916 All. 155. That was a converse case. In 34 ALL. 98 the lambardar was the plaintiff; in this case the lambardar was the defendant. The point for consideration was formulated in these terms:

In the events which have happened the only point which we are called upon to decide is whether the lower appellate Court was correct in directing that in estimating what was due to the plaintiffs the sir and khudkasht held by the other cosharers should be taken into account.

And their Lordships, after a review of the entire case-law including 34 ALL. 98 and 36 ALL. 441, held that the lambardar was liable for the collections made by the other cosharers. The learned Counsel for the respondent has strongly relied upon the case in *Koka v. Chunni* : AIR1927 All623 . This is certainly an authority in his favour. Reference was made in this case to 34 ALL. 981 and 38 ALL. 2233 but we do not find any reference to the Full Bench case in 36 all; 441 referring to 38 ALL. 2233 their Lordships made the following observation at p. 346:

It is not clear from the recorded judgment in 38 All. 2238 whether the plaintiffs were asking the lambardar to account for an excess which had been realised by the lambardar or not.

With profound respect, the language of the judgment leaves no room for doubt that the lambardar was being called upon to account for the collections made by the other co-sharers. The case in *Kundan Lal v. Basant Rai* ('24) 11 A.I.R. 1924 All. 935 takes the same view as 38 ALL. 223. So is the case in *Sohan Pal Singh v. Special Manager, Court of Wards of the Estate of Amir Begam* : AIR1937 All113 , *Bennet J.* held:

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 cosharers 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...

5. There has been a very recent decision of this Court to which one of us was a party, *Surya Pal Singh v. Netrapal Singh* : AIR1945 All28 . It was held in that case that *Ganga Singh v. Ram Sarup* ('14) 1 A.I.R. 1916 All. 104 was not open to the criticism made in *Koka v. Chunni* : AIR1927 All342 and that the view expressed in the earlier case was the correct view. Mr. B.D. Mukerji, the learned Counsel for the respondent, who has argued the case very well, contends that to the extent that the other cosharers make collections in excess of their legal rights, they are tortfeasors and a lambardar cannot be made accountable for a tortious act. It is not necessary to go into this interesting question, because Rule 232, framed under the orders of the Government, which defines the duties of a lambardar, makes it clear that he has to 'act on behalf of the other cosharers in an undivided mahal or in the common land of the mahal.' This provision is general and covers the present case. On the other points decided in the case, we are of opinion that the Courts below came to a right conclusion. We, therefore, allow the appeal, modify the decrees of the Courts below and send the case back to the Court of first instance through the lower appellate Court for accounting on the lines indicated in our judgment. The costs of this appeal will be on the parties in any event.