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Court : Allahabad

Decided On : Mar-20-1930

Reported in : AIR1930All640

Appellant : Nilkanth

Respondent : Rup Singh and ors.

Judgement :

Bennet, J.

1. This is a second appeal by Nilkanth, defendant, against concurring decrees of the two lower Courts holding him liable to the plaintiffs for profits for the years Rs. 1331 to 1333. The parties are related as follows:

Chhatari _____ | _____ | | | Nilkanth, Ajudhia
Inderjit Sattidindefendant 1 | | defendant 2| |Plaintiffs 3 and 4 Plaintiffs 1 and 2

2. It is admitted that the plaintiffs and defendants, their uncles, are co-sharers in a patti No. 1, rental Rs. 205-12-0, and that Chhatari was the original owner of the land in question. After his death his widow was entered, and on her death in F. 1331 the names of the parties were entered. Para. 2 of the plaint alleges that the defendants make collections in respect of the said patti No. 1 and pay the Government revenue and cesses, and that the profits are then to be divided between the parties in proportion to the half share which each party owns. This

arrangement is admitted in para. 2 of the written statement of the appellant. The written statement set up a plea that profits were satisfied by the grant to the plaintiffs of land in other mahals, but the lower Courts have found this plea to be unproved. The situation therefore is that the defendants alone collected the rent in this patti and have not paid any profits to the plaintiffs who are due a half share of the rent. There is apparently no area of sir and khudkasht in this patti. There is a lambardar Ramnarain, but he does not make any collections in patti No. 1.

3. The chief ground of appeal is that the lower Courts have granted a decree for profits to the plaintiffs on gross rental. The suit was brought under Section 227 Act 3 of 1926, and it is contended that a decree can only be passed against co-sharers on collections and not on gross rental. Both the lower Courts have laid stress on the fact that the defendant was negligent in collections and did not sue any tenants for arrears of rent or eject any tenants and allowed the arrears to accumulate from practically nothing to the sum of Rs. 153-9-5 during the three years in question. I consider that this contention for the appellant is well founded, and that a decree cannot be passed on gross rental against a co-sharer for negligence of that co-sharer in making collections. It is true that in the present case the defendants undertook what are practically the duties of lambardars, but in default of the definite appointment of the defendants as lambardars the liability of a lambardar under Section 226, Act 3 of 1926, cannot attach to the defendants. The remedy is for the plaintiff's to take part in making collections themselves and the plaintiffs should not leave that work entirely to the defendants.

4. There was another ground under which the lower appellate Court and the Court of first instance had justified the decree on gross rental and that was that the defendants did not produce any accounts. For the appellant-defendant it was contended that sufficient compliance was made with Section 227(2), Act 3 of 1926 by the production of the siyaha. I do not consider that the production of the siyaha is sufficient compliance with that section. It might well be that the complaint against a co-sharer was that although he made collections he did not write up the siyaha by dictation to the patwari. In that case what he would be required to produce under Section 227(2) would be the account books in which he actually entered his collections. It is obvious that a person making collections must keep

some such account, otherwise he would not know how much he had collected from each tenant. The subsequent duty cast upon a co-sharer making collections of dictating those collections to the patwari is not sufficient compliance with the obligation to keep accounts under Section 227(2). But the lower appellate Court has not found that the account in the siyaha is not a true account. The finding of that Court appears to be that the difference between the amount of collections recorded and the amount of gross rental is due not to the neglect to enter collections in the siyaha but to neglect of 1930 A/81 & 82 the defendant to make the collections. Under those circumstances a decree on gross rental cannot be passed against the defendant under Section 227(2). Accordingly I allow the appeal on this point. In place of the decree of the Court of first instance on gross rental I allow a decree on collections which, as found by the Court of first instance, amounts to Rs. 197-3-0 due to the plaintiff. Interest will be allowed as decreed by the lower Courts.

5. A further point was urged in ground 3 of appeal that rents not verified but written as zaid could not be realized lawfully and must be deducted from the gross rental. This ground is not contained in the grounds of appeal to the lower appellate Court and therefore the point cannot be taken in second appeal. In any case the decree is now on collections. Accordingly I allow the appeal with costs to the extent indicated.