

Digambar Singh Vs. Birendra Singh

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Court : Allahabad

Decided On : Nov-28-1929

Reported in : AIR1930All313a

Appellant : Digambar Singh

Respondent : Birendra Singh

Judgement :

1. These five connected appeals arise out of suits for profits. The first group of suits relating to appeals 795, 681 and 796, were decreed against the principal contesting defendant, Digambar Singh, under Section 165 as a co-sharer. The other two suits relating to appeals 793 and 794 were decreed against the same defendant as a lambardar, under Section 164, Tenancy Act of 1901.

2. One ground of appeal is common in all the cases. It is argued that the plaintiff is a member of a Hindu joint family consisting of himself and the defendants and that under the rule of Hindu Law a member of a Hindu joint family cannot; sue the manager for his share of profits. It has been held by the civil Court in a partition suit, which was decided after the decision of the appeal by the Court below, that the parties are members of a joint family. We need not consider the effect of this decision on this point since in our opinion it is immaterial on the point at issue. The rule of Hindu Law cannot be contested, but it has been held that in a suit by a co-sharer for profits under the Tenancy Act he can obtain his share of profits, if he is recorded as entitled to a separate share, notwithstanding the fact that he may be a

member of a joint family with the defendants.

3. The learned advocate for the appellant relies upon a ruling in Chandi Prasad v. Jawala Prasad [1899] A.W.N. 206. This ruling no doubt does support his contention, but it is a very old ruling based upon the provisions of the Tenancy Act of 1881, and so far as we have been able to ascertain it has never been followed in any reported decision. It has once been referred to in the case of Sohbat Kuar v. Raj Devi A.I.R. 1924 Oudh 118 but in that case it was not followed. In our opinion it can no longer be taken as a good authority.

4. On the other hand, we have a clear authority in the ruling: Sheo Narain v. Bala Rao 5 U.D. 127 by a Bench of this Court, to the effect that a co-sharer who is recorded as owning a specific share is entitled to sue for profits in respect of that share even though he may be in fact a member of a joint family with the defendants. This was the ruling relied upon by the Courts below, and in our opinion they were correct. We, therefore, repel the appellant's contention on this point.

5. Another argument has been advanced which is common to all the suits decreed against the defendant under Section 165. It is contended that the defendant is only liable for profits collected by him in excess of his own share. It has not been held that he has made collections in excess of his own share and, therefore, it is urged that he is not liable to pay anything to the plaintiff. The contention may be sound in a case where, by agreement between the co-sharers, each co-sharer makes separate collections on his own account. In the present case, however, it is clear that the defendant-appellant has been making collections not only on his own account but on account of the plaintiff who is his nephew and a minor. The defendant himself pleaded that he was making the collections in the capacity of karta of the joint family. It is clear from his own statement, therefore, that he was making collections in the capacity of agent of the plaintiff. For this reason we are of opinion that the plaintiff is entitled to his share of the collections made by the defendant who was collecting not only on his own account but on the plaintiff's account.

6. A third point has been argued based upon the decision of the civil Court in a partition suit between the parties decided on 28th February 1927, that is, after the decision of the Court below. In that suit it was decided that the parties were members of a joint family and that the plaintiff was entitled to one-fourth of the joint family property including the property in suit. In the khewat the plaintiff was recorded as proprietor to the extent of one-third and the Courts below have, therefore, decreed the plaintiff's share at one-third of the collections. The learned advocate for the appellant relies upon a ruling of this Court in Surjan Singh v. Chatura Kunwar A.I.R. 1922 All. 356 in which it was held, following a Full Bench case in Bhawani Singh v. Dilawar Khan [1909] 31 All. 253 that in a suit of this nature the Courts are bound to give effect in appeal to a decree of proprietary title passed by a civil Court, even when the civil Court's decree is passed after the decision by the revenue Court of first instance. No authority has been shown to us why the principle of this ruling should not be applicable to the present appeals, and we consider that it is applicable. As it has been held that the plaintiff's share is only one-fourth he should only be decreed his profits at the rate of one-fourth of the collections instead of at the rate of one-third as decreed by the Courts below.

7. We, therefore, allow all the appeals to this extent and modify the decrees of the Courts below by decreeing to the plaintiff his share of profits at the rate of one-fourth instead of one-third. Let fresh decrees be prepared on this basis. Parties will pay and receive costs proportionate to failure and success in all Courts.