

Har Charan and ors. Vs. Bindan and ors.

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SooperKanoon Citation : sooperkanoon.com/461366

Court : Allahabad

Decided On : Feb-18-1910

Reported in : 5Ind.Cas.559

Judge : John Stanley, C.J. and ;Banerji, J.

Appellant : Har Charan and ors.

Respondent : Bindan and ors.

Judgement :

1. The suit out of which this appeal has arisen was brought by the plaintiffs-appellants for their share of profits of shamlat that is common land. The Court of first instance dismissed the suit on the finding that the plaintiffs had not received their share of profits within 12 years preceding the date of the suit. The lower appellate Court found that there was no evidence of any adverse claim or repudiation of the plaintiffs' title by the defendants and held that the mere non-payment of profits did not extinguish the plaintiffs' right. It accordingly decreed; the claim.

2. On appeal to this Court, the learned Judge before whom the case came disagreed with the view of the lower appellate Court and restored the decree of the Court of first instance. From this judgment the present appeal has been preferred under the Letters Patent.

3. We are unable to agree with the view of the learned Judge of this Court. He draws a distinction between the case of a lambardar and the case of co-sharers making collections for the whole co-parcenary body. We fail to see any such distinction. Co-sharers who make collections for themselves and other co-sharers are in the same position as regards the amounts collected as lamhardar. In the case of a lambirdar it was held in *Mihin Lal v. Badri Prasad* 27 A. 436 : A.W.N. (1905) 36 : 2 A.L.J. 107. that the fact that a co-sharer plaintiff has received no profits for 12 years previous to the suit from the lambardar is not by itself sufficient to bar the suit in the absence of evidence that the defendant lambardar was during those 12 years holding adversely to the plaintiff. In this case the ruling in *Raj Bahadur v. Bharat Singh* 27 A. 348 : A.W.N. (1905) 15 : 2 A.L.J. 110, was approved of. That was a case in which a co-sharer in an undivided mahal claimed to recover a share in the profits of certain sir land appertaining to the mahal. It was held that the mahal being undivided the defendants' possession of the sir land had never really been possession hostile to the plaintiff, and in the absence of any repudiation of the right of the plaintiff or his predecessor-in-title to enjoy the profits or to be in possession of their share of the sir lands, the claim was not time-barred. The principle of these rulings fully applies to the present case. The learned Judge of this Court says: If the defendants have appropriated to themselves the whole profits of the shamlat land, they thereby, I hold, gave notice to the plaintiff that they were setting up. a title adverse to him, and if they did so for upwards of 12 years as in this case, the plaintiffs' claim would be barred. We wholly disagree with this view. The appropriation of profits cannot be regarded as notice to the co-sharer that their title was repudiated. As it was found in this case by the lower appellate Court that the plaintiffs' title was never denied and that there was no evidence of any adverse claim on the part of the defendants for a period of 12 years the plaintiffs' claim was not time-barred, and the lower appellate Court was right in decreeing it.

4. We accordingly alter the appeal, set aside the decree of this Court and restore that of the lower appellate Court with costs.