

Moti Ram Vs. Sri Lal

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Court : Allahabad

Decided On : Jan-04-1934

Reported in : AIR1934All684

Appellant : Moti Ram

Respondent : Sri Lal

Judgement :

Kendall, J.

1. These two appeals arise out of two suits in which the plaintiff-appellant sued his co-sharers in two different mahals under Section 222, Agra Tenancy Act 1926, for the amount that he had paid as arrears of revenue on their account. The defence was that the plaintiff had himself realized the rents in the mahals either himself or in the person of his brother, Basti Ram, so that the arrears of revenue had been rightly realized from him as none of the defendant-respondents had been collecting profits. The trial Court decreed the plaintiff's claim, but this decision was reversed by the lower appellate Court on the ground that, the plaintiff-appellant is proved to have collected the rents in the mahals so that, as the learned Judge has remarked:

I do not see how the non-collecting co-sharers could be made liable to pay to another co-sharer who had himself made collections and particularly when it was not shown that the collections made by the plaintiffi were less than the amount of

revenue paid by him.

2. Section 222, Tenancy Act, gives a co-sharer a statutory right to recover from, his fellow co-sharers any amount that he has paid by way of arrears of revenue on their behalf, and the fact that he may have collected profits does not in itself deprive him of that statutory right. It might have and in fact has been argued that the defendants-respondents were entitled to set off the amount of their profits that had been collected by the appellant, but it has been pointed out that no such set-off can be claimed in a suit under the Agra Tenancy Act. In Schedule 2, list 2, item 10, it has been specifically provided that:

No set-off shall be allowed in any suit under this Act except a sum due to the defendant on an unsatisfied decree under this Act or under any enactment hereby repealed.

3. It is quite clear therefore that an unascertained amount which may or may not have been collected by the plaintiff could not be set off against the amount to which he was legally entitled for the payment of land revenue. A further objection has been taken to the decision of the lower appellate Court in that the finding that the plaintiff-appellant made collections of profits which were properly due to the respondents is based on evidence that is clearly inadmissible. The Court relied on the two pieces of evidence, viz. (1) the copy of a statement made by Basti Earn in another proceeding to the effect that he alone had made collections in the mahal. Basti Ram did not give evidence in the present case, and it is alleged that the reason why he was not cited as a witness was that he was colluding with the, plaintiff. He is said to be a real brother of the plaintiff and to be joint with him. These allegations, even if they are facts, however would not make his statement recorded in another proceeding admissible in evidence in the present case. It is suggested that his statement may be admitted as a 'sort of admission' on behalf of the plaintiff' appellant himself. But I know of no rule of evidence under which the statement of one person can be regarded as the admission of another person merely on the allegation that the two are in collusion, and (2) the statement of the patwari might have been of value, but as a matter of fact it appears to have been purely hearsay. The statement has been read to me and it shows that the patwari

said that he had heard from the tenants that Moti Ram had not made collections but that Basti Ram did. If the patwari had to look to tenants for information on the point, it is clear that he was not speaking from his own knowledge, and I agree with Dr. Asthana who has argued the case for the appellant that this evidence too was inadmissible. The appeals must therefore succeed both on the grounds that the evidence to prove that the plaintiff-appellant had made collections that were properly due to the respondents was not admissible, and also that even if this fact had been proved the respondents could not have been allowed under the provisions of the Tenancy Act to set off the amount so collected against the plaintiff's claim and they must have recourse to a separate suit for profits against the co-sharer who has made the collections. I therefore allow both appeals with costs in all Courts, to set aside the decrees and orders of the lower 'appellate Court and direct that the decrees of the trial Court in each case be restored.

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