

**Sarnam Singh Vs. Bisram Singh**

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**Court :** Allahabad

**Decided On :** Feb-14-1913

**Reported in :** 18Ind.Cas.723

**Judge :** Henry Griffin and ;Chamier, JJ.

**Appellant :** Sarnam Singh

**Respondent :** Bisram Singh

**Judgement :**

1. The facts of this case are sufficiently stated in the judgment of this Court dated the 18th April 1912. For the purpose of our final orders, it is sufficient to say that the plaintiff, Sarnam Singh, and his uncle Bisram Singh were members of a joint family. They held jointly certain lands as sir and khudkasht In December 1904, they partitioned all their lands, the agreement between them being that he in whose lot any particular plot would fall would be the sole owner of that plot. The partition took place accordingly, but the defendant continued in possession of the three plots now in suit, which had been assigned to the plaintiff on partition. On plaintiff suing to eject the defendant, the latter set up the defence, first, that he was not a tenant, and, secondly, that if he was tenant, he was an ex-proprietary tenant. The Court of first instance decreed the suit for ejection. The lower Appellate Court on appeal dismissed it. It appears to us that the point involved in the suit is a very simple one. The parties agreed to divide their joint holdings between them and one particular point agreed upon was that each party would take his share

unencumbered by any ex-proprietary rights on the part of the other. We must give effect to this agreement. There is nothing in this agreement which is contrary to law. The case does not fall under Section 126 of the Land Revenue Act relied on by the respondent. It was not a case of the sir of one co-sharer being allotted to another. The parties were joint owners of their sir and agreed to divide it. If it is a fact that Bisram Singh was recorded as the person who actually cultivated the plots in suit, it makes no difference. He and the plaintiff were members of a joint family and it must be presumed that he cultivated not only on his own behalf but on behalf of the joint family of which he was a member. We, therefore, allow this appeal, set aside the decree of the lower Appellate Court and restore that of the Court of first instance with costs in both Courts including in this Court fees on the higher scale.

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