

Chander Sen Vs. Mohar Singh

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Court : Allahabad

Decided On : Jul-22-1924

Reported in : AIR1925All538; 85Ind.Cas.700

Appellant : Chander Sen

Respondent : Mohar Singh

Judgement :

1. The judgment of the learned District Judge is entirely untenable. The suit out of which the appeal arose was for profits brought by a co-sharer against a son of a deceased lambardar. The lambardar was not the lambardar for the whole mahal but ha was the lambardar for a ten biswa paid. The plaintiff accordingly described the defendant and his late father as co-sharer and he headed his plaint as a suit; brought under Section 165 of the Tenancy Act. The defendant took no exception to this description of the suit in the written statement and no issue was framed in the Court of first instance which can indicate that any such objection had been taken before it. The suit was decreed partially and there was an appeal by the defendant. There was also a cross objection by the plaintiff. The first ground taken by the defendant before the District Judge was that the suit instituted under Section 165 of the Tenancy Act was not maintainable. The learned Judge was of opinion that this was a very valid argument and the suit should fail. The plaintiff offered to amend his plaint but the learned Judge was of opinion that there was a radical difference in the natures of the suits under Sections 164 and 165 and therefore no amendment could be permitted. It may be true that there is a

difference in the character of the two classes of suit; but if Section 164 was the proper section for a suit like the present one, no harm could be done by the amendment proposed. The nature of the suit is indicated by the allegations made in the plaint and not by quoting a section which does not apply.

2. We set aside the decree of the Court below and remand the appeal to it with the direction to re-enter it on the register of appeals and dispose of it according to law. Costs here will, at all events, be awarded to the successful appellant. Costs in the Court below will be in the discretion of that Court.

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