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Court : Allahabad

Decided On : Feb-28-1918

Reported in : AIR1918All357; 46Ind.Cas.652

Judge : George Knox, J.

Appellant : Gobardhan

Respondent : Padam Singh

Judgement :

George Knox, J.

1. This second appeal arises out of a suit brought by one Padam Singh against one Gobardhan. Padam Singh sued to recover Rs. 224-14 0 on account of the arrears of rent said to be due from one Gobardhan. In the plaint he alleges that he and certain other persons held khudkasht land and that the khudkasht land in dispute has fallen to his lot under private partition and that he alone receives rent from the defendant. The defendant starts in his written statement by refusing to admit everything stated in the plaint; then goes on to say that he is the sub-tenant from all the co-sharers in whose name the khudkasht is recorded in the papers of the Patwari, that he has always paid rent to Ram Chander and did pay the rent of the years in dispute to the said Ram Chander and that nothing is due from him. There is also a question as to the amount of rent due. The Court of first instance held that Padam Singh was not entitled to claim the whole of the rent but only

entitled to collect Rs. 39 and gave him a decree for Rs. 80 out of the total amount claimed.

2. Both parties, I am told, went in appeal to the District Judge of Agra. The appeal before me arises from the appeal presented in that Court by Thakur Padam Singh. In appeal it was contended that the lower Court has erred in holding that Ram Chander has been collecting rent of Rs. 35 from the defendant or was entitled to collect it, that it has been sufficiently proved that the plaintiff is entitled to collect the rent in dispute from the defendant and that the judgment of the lower Court is against the weight of evidence and probabilities of the case.

3. The District Judge started by setting out as his first issue, whether the plaintiff Thakur Padam Singh is entitled to sue the defendant for rent without joining the other co-sharers. He says that in the present case the present representatives of the other two sons of Gobind Singh, with the exception of Ram Chander, have appeared as witnesses and have deposed that a private partition has taken place and that in accordance with that private partition the land held by the defendant Gobardhan has come into Thakur Padam Singh's share. He further points out that Har Chand and Ramji Lal have appeared and given evidence relating to the partition and have admitted Padam Singh's separate title to the lands held by Gobardhan. Upon this he holds that Thakur Padam Singh is alone entitled to collect the rent from the defendant Gobardhan. He, therefore, modifies the decree of the Court below and gives the plaintiff a decree for the rent of the whole holding.

4. The defendant comes here in appeal and puts forward a finding and decree of a Revenue Court in a previous suit between the same parties, the effect of which is that the plaintiff is not entitled to collect the rent of the present holding and urges that that operates as res judicata. He further contends that under Section 194 of the Agra Tenancy Act the suit is barred. I take this latter plea first. Section 194 lays down that where there are two or more co-sharers in any right, title or interest, all things required or permitted to be done by the possessor of the same shall be done by them conjointly, unless they have appointed an agent to act on behalf of them all. The question of agency does not arise at all. According to the plaint, the plaintiff Thakur Ram Chander and others held khudkasht lands and there are,

therefore, two or more co-sharers in the right title or interest relating to this land. An attempt is made to take the case out of Section 194, Clause (1), because of an alleged private partition. All that has been stated in the judgment about the private partition is that the land held by the defendant Gobardhan has come into Thakur Padam Singh's share. This may or may not be the case, but a private partition of this vague nature is certainly not enough to take the case out of Section 194 of Act II of 1901. The plaintiff appears to have himself felt this difficulty, for he attempts to set up that he is entitled to receive separately his share of the rent payable by the defendant. This is an exceptional state of things, against probabilities, and a state of things which requires strong and clear evidence to support it. No local custom to this effect has been advanced and we have to fall back upon a special contract, if any, by which the plaintiff is entitled to recover separately his share of rent payable by the defendant. So far as the finding of the lower Appellate Court goes the special contract is not mentioned. Certain evidence has been set out in the judgment, which evidence I am told admits Padam Singh's separate title to the lands held by Gobardhan but there the evidence stops short. It might be the case, as I have already said, that Padam Singh in this private partition was under an agreement entitled to the lands held by Gobardhan, but that will not entitle him to receive separately his share of rent payable by Gobardhan. There must be a special contract clearly setting out this opposition to law as stated in Section 194, Clause (1) of the Agra Tenancy Act. The appeal succeeds, the decrees of both the Courts below are set aside and the plaintiff's claim dismissed with costs in all Courts.

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