

Sarwan Singh Vs. Ramsarup Singh and anr.

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Court : Allahabad

Decided On : May-13-1910

Reported in : 6Ind.Cas.499

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

Appellant : Sarwan Singh

Respondent : Ramsarup Singh and anr.

Judgement :

1. The plaintiffs came into Court asking for a declaration that they were entitled to, as tenants, one-half of certain holdings, instead of a-third share in them as recorded at the time of the settlement. The holdings originally belonged to the ancestor of both partners. One of the members of the family was named Raghunandan Singh who died in the year 1905. The plaintiffs allege that they with the defendants and Raghunandan Singh constituted a joint Hindu family, and that they and the defendants, being now the sole representatives of the family, were entitled to be recorded as tenants of the holdings in equal shares. The suit was defended among other grounds on the ground that the plaintiffs with the defendants and Raghunandan Singh did not form a joint Hindu family and that the defendants held adverse possession of the holdings, being recorded as in possession for several years.

2. The Court of first instance decreed the suit. The lower appellate Court came to a different conclusion upon the evidence and dismissed it. The question before the lower appellate Court was whether the plaintiff's had succeeded in proving their assertion that the family had been joint, although certain portions of the holdings were recorded in the names of different members. The learned District Judge refers to the evidence before him, and particularly to the settlement entries which constitute the most important evidence in the case. These entries appear to have been attested by various members of the family. The learned District Judge goes on to say that in spite of these entries the plaintiffs, the years after the settlement had been concluded, came into Court, and alleged that the whole land formed one holding, and that they and the defendants continued to form a joint family up to the end of the year 1905 and to cultivate all the lands jointly. This assertion is characterised by the learned District Judge as amazing. He then discusses the further evidence on the point and refers to (the evidence of the patwari to the effect that Raghunandan Singh, who died in 1905, remained joint with the defendants and that they had separated from the plaintiffs. His final conclusion upon the question before him was as follows: 'I have no doubt whatever that the facts of possession are represented correctly by the settlement record and that the plaintiffs' assertion that they continued to cultivate all the holdings jointly with the defendant, up to the present time is totally false.' The learned District Judge on this finding dismissed the suit.

3. The plaintiffs came in second appeal to this Court, and the learned Judge, before whom it came for hearing, remitted certain issues for findings, being of opinion that the findings of the lower appellate Court were neither clear nor satisfactory. Upon the issues so remitted the findings of the District Judge, who is not the same Judge who decided the appeal originally, were altogether in favour, of the plaintiffs. As a result of these findings the learned Judge of this Court has decreed the plaintiffs' appeal.

4. Against that decision the defendant comes before us in appeal under the Letters Patent, the ground taken being that, the learned District Judge having in effect found that the allegations on which the plaintiffs sued were false, it was not open to this Hon'ble Court to remit issues on questions of fact which the learned District

Judge decided adversely to plaintiffs. The holdings which are the subject-matter of the present suit are occupancy or non-occupancy holdings. Succession to tenancies of this nature is governed by the provisions of Section 22 of the Tenancy Act. The plaintiffs, before they can succeed, to the tenancy recorded in the name of their deceased relative Raghunandan Singh, were bound to show that they shared, in. the cultivation of the holdings at the name of Raghunandan's death. This fact has been distinctly found by the learned District Judge, who decided the appeal against the plaintiffs. As we have said above, the learned District Judge also held that the assertion of the plaintiffs that they continued to cultivate all the holdings jointly with the defendant n, n to the present time is totally false. These findings in our opinion, were sufficient to dispose of the case and it was, therefore, unnecessary to remit the issues, set out in the order of our learned brother dated the 3rd of June 1908. We are of opinion that the findings of the learned District Judge, set out in his judgment of the 15th of March 1907, were sufficient for the disposal of the appeal, and the appeal to this Court should have been decided upon those findings. We allow the appeal, set aside the decree of this Court and restore that of the lower appellate Court with costs of both appeals to this Court.