

Mohammad Jan Vs. Gulzari and ors.

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Court : Allahabad

Decided On : May-01-1934

Reported in : AIR1934All905; 153Ind.Cas.160

Appellant : Mohammad Jan

Respondent : Gulzari and ors.

Judgement :

Collister, J.

1. This is a plaintiff's appeal arising out of a suit under Section 132, Agra Tenancy Act for arrears of rent. It appears that two brothers held a joint tenancy. They are now dead and at the date of a suit one branch was represented by Jwala and Baldeo and the other by the defendant-respondent, Gulzari and others. Jwala and Baldeo sued under Section 37, Tenancy Act, for partition of the holding and they impleaded the zamindar, who is the plaintiff-appellant in this case. On 4th April 1930, the plaintiff put in an application in which he stated that he had no objection to the partition. Accordingly the suit was decreed and the holding was partitioned and the Court directed that the said partition be recorded in the revenue papers; but for some reason or other that order was not complied with. The present suit was instituted by the plaintiff against the members of both branches of the family, thus treating the tenancy as joint. Gulzari objected that there had been a partition and that he was only liable to pay the rent which has been fixed on his half of the

tenancy. He said that he had offered the plaintiff the rent which was due from him, but the plaintiff had refused to take it and had insisted that Gulzari should pay the amount of rent due from Jwala and Baldeo in addition to what was due from himself.

2. The Court of first instance decreed the suit of the plaintiff against all the defendants. The Court held that it was the duty of the defendants to see that the division of tenancy was given effect to in the revenue papers and since they did not do so, the decree of the Court in the case under Section 37 was inoperative as against the plaintiff zamindar. The lower appellate Court disagreed with the view of the trial Court and decreed the plaintiff's suit in respect of the share of rent due exclusively from the defendants-respondents in accordance with the division of tenancy. The point taken before me in appeal is that under Section 39, Clause 2, Land Revenue Act, the division of tenancy should have been attested and that the omission of the defendants-respondents to have it so attested precludes them from pleading liability for a half-share only of the rent, Section 39, Clause (2), Land Revenue Act, lays down that:

No division of a holding occupied by two or more tenants and no distribution of the rent payable in respect thereof shall be recorded unless the consent of the landholder and of all the tenants concerned has been attested before a revenue Court or the Qanungo.

3. Section 39, Land Revenue Act, was enacted at a time when Act 2 of 1901 (i.e., the old Tenancy Act) was in force, and Section 32 of that Act expressly prohibited the institution of a suit for the division of a holding or distribution of rent thereof. Under Section 37 of Act 3 of 1926 (i.e., the present Tenancy Act) it is provided that:

A division of a holding or distribution of the rent payable in respect of a holding or any portion thereof, or such division and distribution shall be effected only (a) by agreement between the co-tenants, or (b) by the decree in a suit instituted under this section by one or more of the co-tenants against the others:

Provided that such division or distribution shall not be binding on the landholder unless he agrees thereto in writing.

4. It is obvious that the provisions of Clause (2), Section 39, Land Revenue Act, were intended to apply to Section 32 of Act 2 of 1901 and they can only apply in respect of Section 37 of Act 3 of 1926 in a case where the division has been made by agreement among the co-tenants out of Court and can have no application whatsoever to a case where a decree has been passed under that section by the Court. When once the revenue Court has decreed a partition of tenancy and has ordered that such partition be entered in the papers, there would be no sense in holding that such partition can only be recorded in the papers if the consent of the land-holder and of the tenants concerned has been first attested before a revenue Court or the Qanungo. The plaintiff was impleaded in the suit under Section 37, and he gave his consent to the partition and he cannot now plead that the defendants respondents are liable to pay more than their share of the rent in accordance with the partition of the tenancy. There is no force whatsoever in this appeal and it is dismissed with costs.

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