

**Lakhmi Chand Vs. Mt. Anandi**

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**Court :** Allahabad

**Decided On :** Jul-21-1931

**Reported in :** AIR1932All272

**Appellant :** Lakhmi Chand

**Respondent :** Mt. Anandi

**Judgement :**

**Sen, J.**

1. This is an appeal by the defendant, and is directed against the preliminary decree dated 25th June 1929, passed by the Subordinate Judge of Muzaffarnagar, in a suit for profits, instituted on 4th August 1926, for recovery of arrears for the period from 15th June 1920 to 30th July 1926.

2. Plaintiff's claim was founded upon an instrument, dated 5th June 1915, under which the plaintiff was entitled to recover from the defendant the profits relating to the moiety share of her husband in the joint estate owned by the latter and Baldeo Sahai.

3. Various pleas were raised in defence, but we are concerned only with two of them:

(1) Jurisdiction; (2) Limitation. These pleas did not find favour with the Court below which decreed the plaintiff's suit. The pleas have been reiterated in the grounds of appeal in this Court and have been argued by the learned advocate for the defendant.

4. It has been contended that the suit was in substance, a suit for profits by a co-sharer against another cosharer in a revenue paying mahal within the purview of Section 227, Agra Tenancy Act (3 of 1926, Local) and that the suit was within the exclusive cognizance of the Revenue Court. We are clearly of opinion that Section 227, Agra Tenancy Act, does not apply to the facts of the case. The term 'cosharer' has not been defined in the Act. The estate of Mt. Anandi under the agreement was very peculiar and in certain respects anomalous. Although her name was mutated in the revenue records, she was not, under the terms of the agreement, entitled to either possession of partition, and had no right to transfer any portion of the property from which the profits accrued. Her rights were confined to the reception of profits from the defendant, who as a surviving member of a joint family, remained in exclusive possession of the entire profits. Where a person under an instrument in the nature of a family settlement has the right to have and enjoy the profits of the property without having the rights of possession, partition or transfer which are the incidents of ownership, such a person is not and cannot be deemed to be a 'cosharer' within the orbit of the Agra Tenancy Act. The suit therefore was properly instituted in the civil Court and was not cognizable by the Court of Revenue.

5. The claim relates to profits for five years from June 1920 to July 1926. The suit was filed on 31st July 1926. We have not been referred to any specific Article of the Limitation Act as governing the claim for profits accruing to the plaintiff under the peculiar terms of the instrument dated 5th June 1915. It was held by the Privy Council in *Mohammad Biyasat Ali v. Husain Banu* [1894] 21 Cal. 157 at 163 that

Article 120 should be applied unless it is clear that the suit is within some other article.

6. Article 120 is the general residuary article and is applicable to all suits, not covered by a specific article. The period of limitation prescribed under this article is

six years from the date when the right to sue accrues. The suit having been instituted within six years of the accrual of the cause of action for each of the five years when the arrears fell due the claim is undoubtedly within time.

7. The appeal is without force and we dismiss it with costs.

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