

Mujtaba Hasan Vs. Raghbir Saran

Mujtaba Hasan Vs. Raghbir Saran

SooperKanoon Citation : sooperkanoon.com/473300

Court : Allahabad

Decided On : Apr-27-1934

Reported in : AIR1934All1038; 150Ind.Cas.1005

Appellant : Mujtaba Hasan

Respondent : Raghbir Saran

Judgement :

1. This appeal must succeed on the short point that the plaintiff-respondents alone were not entitled to maintain the suit. It appears that there are two classes of people in the village. The plaintiffs are known as zamindars and the defendants as muafidars; while some of the zamindars also hold the character of muafidars. The suit, out of which this appeal has arisen, was instituted by two out of several zamindars for recovery of what they call their share of the zamindari dues from four out of several muafidars.

2. One of the points taken in the Court of first instance and repeated throughout was that the plaintiffs alone could not maintain the suit. The learned Munsif, who heard the suit, looked at the two khewats one for the zamindars and the other for the muafidars, and calculated what according to those khewats would be the share of the plaintiffs in the zamindari dues. He found that the defendants, the plaintiffs and one Lalta Prasad alone were entitled to recover the entire amount of the zamindari dues, but that was not the case. Besides Lalta Prasad there were Partab Narain and others, who were also entitled to recover something as

zamindars. After the case had been heard and before the judgment was delivered, Lalta Prasad put in a petition, saying that he was in the habit of realising his share of the zamindari dues, from Ram Sarup. This apparently satisfied the learned Munsif who decreed the claim against the defendants.

3. The matter was taken in appeal and the learned Judge took the same view as the Munsif. In this Court the point that the plaintiffs alone were not entitled to maintain the suit has been repeated and we asked the learned Counsel for the respondents to establish the case of his clients, viz., of being entitled to sue for their shares separately. Section 266, Agra Tenancy Act, of 1926, lays down that when 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. According to this rule of law, all the zamindars should have joined in instituting the suit. The learned Counsel for the respondents drew our attention to a certain previous litigation, namely, Suit No. 493 of 1921, in which there was a compromise between the predecessors of the present parties. There was no issue in that suit as to whether the plaintiffs, predecessors alone were entitled to maintain the suit, and there was no decision. The judgment therefore does not operate as *res judicata*. Indeed, it has been found by the lower appellate Court that it does not operate as *res judicata* in respect of the amount payable by the defendants. We are of opinion that the previous litigation does not contain anything which binds the parties on the present issue.

4. It is not necessary for us to decide whether one suit against the muafidars of the several pattis brought in the Civil Court was maintainable. The result is that the suit was not maintainable by the respondents alone. We give effect to this plea and dismiss the plaintiffs' suit with costs throughout.