

Gajram Singh and anr. Vs. Balwant Singh and anr.

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Court : Allahabad

Decided On : May-14-1929

Reported in : AIR1929All702

Appellant : Gajram Singh and anr.

Respondent : Balwant Singh and anr.

Judgement :

Niamatullah, J.

1. Parties are cosharers in a certain mahal, neither of them being the lambardar. The plaintiffs-respondents brought the suit, out of which this appeal has arisen, for settlement of account under Section 165, Agra Tenancy Act 2 of 1901. They claimed profits to the extent of their share out of the entire rental of the mahal. The defendants contested their liability to pay the amount claimed by the plaintiffs, and pleaded that the collections fell short by a considerable amount. The Courts below have awarded profits to the plaintiffs, as claimed by them, on the entire rental, making allowance for Government revenue and incidental charges. The defendants appeal.

2. It is contended on behalf of the appellants that there is an essential distinction between a suit against a lambardar under Section 164 and one for settlement of account against an ordinary cosharer who has made collections under Section 165 of the same Act. In the former case there is a statutory provision making the

lambardar liable not only for the profits actually collected but also for those which he could have collected by the exercise of due diligence. A cosharer who has made collections in a particular year is not liable to pay profits on what he might have collected by exercise of due diligence, there being, in his case, no duty enjoined by law to make collections. If the judgment of the Courts below rested on the ground that it was the defendants' duty to make collections of the entire rental and they failed to discharge their duty, this argument might have been entitled to weight but as I read the judgment of the lower appellate Court, it proceeds on the inference that the defendants did, in fact, collect the entire rental but fraudulently concealed their collections so as to deprive the plaintiffs, their cosharers, of their full share of the profits. The defendants were called upon to produce the accounts of their collections; but they failed to do so. The lower appellate Court has inferred that, if the accounts had been produced they would have been against the defendants. It was quite permissible for the lower appellate Court to base its finding of fact on the inference to be drawn from the failure of the defendants to produce the accounts.

3. Reference has been made to Abdul Rashid v. Abdul Latif [1908] 5 A.L.J. 117, in which it has been held that in a suit under Section 165, Agra Tenancy Act, only the actual collections made by the defendant ought to be taken into account in determining the amount of profits due. That was a case in which profits were claimed on gross rental not on the ground that the defendant had made full collections, but on the ground that the rent left uncollected would have been collected but for the gross negligence of the defendant. In the case before me the decree of the lower appellate Court is based on the finding that the entire rental has been collected, and if this finding can stand-and I am of opinion it must stand in second appeal-the decree of the lower appellate Court is clearly right. In the view of the case that I have taken, this appeal has no force. It is accordingly dismissed with costs.