

Bashir Husaln Vs. Mohammad Ali and ors.

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SooperKanoon Citation : sooperkanoon.com/481133

Court : Allahabad

Decided On : Jul-09-1929

Reported in : AIR1929All810

Appellant : Bashir Husain

Respondent : Mohammad Ali and ors.

Judgement :

Sen, J.

1. The facts of the case clearly show that the suit, as framed by the plaintiff, was misconceived and that the civil Court was not competent to grant the reliefs claimed by the plaintiff in the suit. The plaintiff came to the Court on the allegation that in mauza Inampur, mahal Safed, the plaintiff was the owner and sharer of 1 bigha, 5 biswas and 8 biswansis in khewat No. 9 of 3 bighas and 14 biswas, and defendants 1 to 3 were the cosharers in 10 biswas 9 biswansis and 12 kachwansis, and in khewat No. 25 of 2 bighas and 1 biswa of the same village the plaintiff was a co-sharer in 7 biswas and 12 biswansis and defendants 1 to 3 were the cosharers in 10 biswas 1 biswansi and 7 kachwansis. The plaintiff alleged that the cosharers were in possession of separate plots, that certain plots specified in the plaint were in the possession of the plaintiff and that the defendant had no right to realize the rent of the plaintiff's share, as each co-sharer realized rent from the tenants to the extent of his share. The principal relief claimed in the plaint was

that, on establishment of the plaintiff's right, the plaintiff may be put in proprietary possession of 8 biswas pukhta land jointly with the defendants, and for a certain sum of money as mesne profits for the years 1332 to 1334 Fasli.

2. The suit was resisted inter alia on the grounds that it was not cognizable by the civil Court, that defendants 1 to 3 were actually making collections of the rent on behalf of the cosharers, that at the date of the suit defendant 1 was the person who was collecting rent and that the remedy of the plaintiff was a suit for settlement of account and profits in the Court of revenue. The Court of first instance gave the plaintiff a decree. The lower appellate Court has reversed this decision and has directed that the plaint be returned to the plaintiff for presentation to the proper Court. The finding of the lower appellate Court is that the plots detailed in the plaint were the joint property of the parties and that the allegation in the plaint that the plots were privately divided was not proved at all. The position, therefore, is that the parties are cosharers and that the defendants or one of them is a cosharer in an undivided mahal and is actually in possession of the property in the sense that he is making collections for the coparcenary body. In such a case, it is not open to the plaintiff as being one of the cosharers to institute a suit in the civil Court for joint possession of property held in coparcenary or for mesne profits. The remedy of the plaintiff is by a proper action before a proper forum, that forum being the revenue Court. The remedy lay by a suit for profits or for settlement of account in the revenue Court and not by a suit in the civil Court for the reliefs as have been claimed by the plaintiff. The above view is supported by a Division Bench ruling of this Court in *Bhola Nath v. M, Buskin* [1894] A.W.N. 127. The result is that this appeal is dismissed with costs.