

Janki Kuar and ors. Vs. Nanda and anr.

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SooperKanoon Citation : sooperkanoon.com/481663

Court : Allahabad

Decided On : Jul-09-1929

Reported in : AIR1929All847; 118Ind.Cas.240

Appellant : Janki Kuar and ors.

Respondent : Nanda and anr.

Judgement :

Sen, J.

1. This is a plaintiff's appeal arising out of a suit for recovery of Rs. 209-7-2, being the rent of certain cultivated land for 1333 and kharif 1334 F. The suit was instituted by the appellant Mt. Janki Kuer, who is the wife of Sri Narain. The defendant against whom the claim was launched, was one Nanda, a resident of and cultivator of mauza Karsora. Another cosharer impleaded in the suit was Raja Dat Prasad Singh, rais of Mursan. The suit was resisted inter alia on the ground that, under the provisions of Section 266 Act 3, of 1926, the suit was bad in law, because there were certain other cosharers who had been left out from the suit and without impleading whom the suit could not proceed. The trial Court gave effect to this contention, and further held that part of the rent had been paid by the tenant in good faith to Raja Dat Prasad aforesaid. The lower appellate Court has affirmed this decision.

2. The plaintiff, along with an appeal to this Court, has presented an application praying that the other cosharers, namely Sri Narain and Het Ram, be also added to the array of parties. Sri Narain is the husband of the plaintiff, and Het Ram is their son. I should have given effect to this contention and directed that the plaintiff should not be penalized by an entire dismissal of the suit by reason of the non-joinder of these two persons and that an opportunity should be afforded to the plaintiff to proceed with his suit after Sri Narain and Het Ram were brought on the record.

3. The trouble, however, is this. The defendant has filed an affidavit, which has not been traversed and which shows that during the pendency of the suit and after the dismissal of the suit by the trial Court, the Collector, proceeding under Cl 2, Section 45, Land Revenue Act (Act 3 of 1901), attached the mahal or part of the mahal and held it under his direct management, because a qualified nominee of the original lambardar was not appointed. The plaintiff was the lambardar of the mahal shortly before the institution of the suit. She however was removed from the lambardarship. No person was appointed as lambardar in her place. The cosharers had failed to nominate any person as lambardar. Under the circumstances, the Collector proceeded under Section 45(2), Land Revenue Act, and brought the property under his direct management. The property continues to be under the direct management of the collector, and during the continuance of this arrangement the tenant has paid the balance of the rent due to him to the revenue Court amin acting for the Collector. The result is that the entire rant for the period in suit has already been paid by the principal defendant. It will serve, therefore no useful purpose to direct that other persons should be included in the array of parties. The result is that I dismiss this appeal with costs.