

Muhammad Ali Vs. Kalian Singh

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SooperKanoon Citation : sooperkanoon.com/495758

Court : Allahabad

Decided On : Dec-31-1969

Reported in : (1875)ILR1All659

Judge : Robert Stuart, C.J. and ;Pearson, J.

Appellant : Muhammad Ali

Respondent : Kalian Singh

Judgement :

Pearson, J.

1. It appears that the mahal of which the plaintiff claims one share of the profits of 1283 Fasli belonged in equal shares to the defendant and his two brothers, who hold 159 high as and 9 biswas of land as sir in partnership. The plaintiff recently acquired the share of one of the brothers by name Sultan Singh by purchase at auction. The sir land is not included in the rent roll, but is admitted by the defendant to be assessable at five rupees per bigha. The Court of First Instance considered the plaintiff to be entitled to a third of the assessable rent, after making the deduction of four annas per bigha required by Section 7 of Act XVIII of 1873 in favour of an ex-proprietary tenant. The lower Appellate Court has ruled that ho is not entitled to claim a share of the profits from the sir land aforesaid, because it has not been assessed with rent under Section 14 of the Act above-mentioned. The special appeal calls in question the correctness of the ruling. The section on

which it purports to be based provides for the enhancement or determination of the rent of an ex-proprietary tenant. How it would possibly be applied in a case like the present in which Sultan Singh has no separate holding but holds jointly with his brothers the sir land aforesaid, it is not now necessary to discuss. There is some show of reason in the appellant's contention that, if action in the matter should be taken under the section, it ought to be taken by the defendant who is the lambardar of the mahal. But whatever may be the course proper to be taken for the purpose of assessing the sir land or Sultan Singh's share of it with rent, we are not prepared to admit that, because such course had not been taken, the plaintiff is debarred from claiming and obtaining his fair share in the profits of the sir-holding. To this he seems entitled in reason and equity, and we decree the appeal with costs, reversing the lower Appellate Court's decree and restoring that of the Court of First Instance.