

Phoolchand Vs. Motilal

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Court : Rajasthan

Decided On : Sep-11-1951

Reported in : AIR1952Raj128

Judge : Sharma, J.

Acts : Tenancy Law; Jaipur Tenancy Act - Sections 100 and 105; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 9

Appeal No. : Civil Revn. Petn. No. 278 of 1950

Appellant : Phoolchand

Respondent : Motilal

Advocate for Def. : P.D. Mathur, Adv.

Advocate for Pet/Ap. : K.C. Sanghi, Adv.

Disposition : Revision allowed

Judgement :

ORDER

Sharma, J.

1. This is a revision application by the defendant against the judgment and decree of the Judge, Small Causes, Jaipur City. The plaintiff and the defendant are co-

sharers in a certain property in village Nevta. The plaintiff's case is that the defendant raised a sum of Rs. 237/- from the tenants of the parties, out of which the plaintiff is entitled to one-third share. He, therefore prayed that a decree for Rs. 77/13/9 on account of his share be passed. The defendant pleaded, inter alia, that the suit was not cognisable by a Civil Court, but it was within the exclusive jurisdiction of Revenue Courts. The Learned Lower Court did not record any finding on this point and decreed the suit holding it to be within time. The defendant appeals and one of the points raised is that the suit was not cognisable by a Civil Court.

2. I have heard the learned counsel for both the parties. To my mind the present suit comes under Section 100 of the Jaipur Tenancy Act which provides that a co-sharer may sue another co-sharer for settlement of accounts and for his share of profits. Under Section 105 all suits of the nature specified in the second schedule shall be heard and determined by a Revenue Court and no Court other than a Revenue Court, shall take cognisance of any such suit or application based on a cause of action in respect of which relief could be obtained by means of any such suit or application, A suit under Section 100 of the Jaipur Tenancy Act is given in Schedule 2 at No. 52. The learned counsel for the opposite party admits that the parties are co-sharers but he says that the suit was neither for settlement of accounts nor for the share of profits. To my mind the suit was a suit for the share of profits and it cannot be said that it ceased to be so, because the plaintiff claimed a specified sum on account of his share and did not make a prayer for accounting. It was held by a Division Bench of this Court in 'MOTILAL v. NANULAL', Civ. App. No. 28 of St. 2003 on the '18th January, 1950' that a suit for a specified sum on account of his share of profits, by one co-sharer against another falls under Section 100 of the Jaipur Tenancy Act and is consequently exclusively triable by a Revenue Court. This ruling is binding upon me, sitting as a single Judge. I find that the suit was exclusively triable by a Revenue Court.

3. The application is allowed, the decree of the lower Court is set aside. Let the plaint be returned for presentation to the proper Court. The applicant, shall get his costs throughout from the opposite party.

