SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Jadu Dass Vs. Sutherland and anr.

Jadu Dass Vs. Sutherland and anr.

SooperKanoon Citation : sooperkanoon.com/862756

Court : Kolkata

Decided On : Jul-07-1878

Reported in : (1879)ILR4Cal557

Judge : L.S. Jackson and ;Tottenham, JJ.

Appellant : Jadu Dass

Respondent : Sutherland and anr.

Judgement :

L.S. Jackson, J.

1. The first question taken before the District Judge on the defendants' appealing, that the plaintiff had been dismissed from his post of Mohunt, failed. The second ground was that the suit could not be maintained, and the Judge decided this point in favour of the appellant. Mr. Field refers to no authority but that of his own decisions. This is a question which has been repeatedly before the High Court, both the Full Bench and Division Benches, and it would have been well if he had examined authorities which are equally binding upon him and upon other Judges in these provinces. Two cases have been brought to our notice to-day, and they are cases with which we are familiar. One was decided by a Full Bench--Doorga Churn Surma v. Jampa Dassee (12 B.L.R., 289; S.C., 21 W.R., 46). In that case the head-note is--'A suit by a co-sharer for arrears of rent which she had heretofore received in proportion to her share, but which she alleged now to be

withhold by the ryot in collusion with the other co-sharers, who were also made defendants, was held to be properly maintainable.' The learned Chief Justice, in referring the case to the Hull Bench, says: 'The plaintiff in this suit is one of three co-sharers in an eight-anna share of rent payable by a ryot, Doorga Churn Surma, and she brought a suit against him and the other co-sharers for her share of the rents, alleging that they were colluding with him. Doorga Churn Surma's defence was that he never paid any rent to the plaintiff, and he had been paying rents to the agents of Gour Chand and Lall Chand, the other defendants,' and so on.--The learned Judges delivered different judgments, but in my own judgment in that case 1 find these observations: 'The owners, it is true, have been accustomed to collect the rents jointly (at least I understand that to be the finding) and by a joint agent; but the parties who have been made defendants along with the ryot have subsequently taken from the ryot, with his consent, their own separate shares of the rents, and the suit which the plaintiff brought, was in effect a suit to recover an arrear, which arrear corresponded with her own share of the rent, which the ryot had vexatiously and collusively refused to pay. That amount still remained unpaid, and the plaintiff being entitled to it, it seems to me that she was justified in bringing the suit, making at the same time the other co-sharers parties as defendants. In point of fact, the conduct of the defendant was not that of a ryot who complained of being subjected to several suits in respect of one claim; it was that of a ryot entering into a collusion with two out of three co-sharers for the purpose of depriving the third.' Mr. Justice Glover thinks that, under the circumstances of the case, the suit was maintainable, and for the reasons given by Justices Kemp and Jackson. Mr. Justice Pontifex says: Under the circumstances of this case, I think there is no doubt whatever that this suit is properly maintainable'--and the learned Judge goes further and says: 'As at present advised, I am not prepared to say, when a ryot is holding under co-sharers but not under a written contract, that one of the co-sharers cannot sue separately for his share of the rent if he makes the other co-sharers defendants'; and the learned Chief Justice concurs. In another case decided only six months after---Tara Chunder Banerjee v. Ameer Mundul (22 W.R., 394)--we find the learned Chief Justice, Sir Richard Couch, saying in page 395: 'Nor does he suggest that he has already paid all the rent except what would be receivable by the plaintiff as his share. Such a case might occur, and then it

would probably be open to the co-sharer, who had not been paid, to sue, asking to have the balance which remained unpaid, and to the whole of which he would be entitled, paid to him. That is not the case here.' So that the learned Chief Justice, probably adverting to what had been held in the Full Bench case, recognized a state of circumstances in which a plaintiff would be allowed to maintain a suit, to which his co-sharers as well as the tenants were parties defendants, for his share of the rent, and particularly in cases whore the amount for which the suit is brought in fact represents the unpaid balance of rent. Now, apart from the other peculiar circumstances of the present case, that is exactly what has occurred here. We find that if the amount of remission, which the co-sharers other than the plaintiff had consented to, be treated as payment (and of course it must be taken as a payment in respect of their interest only, the plaintiff not having agreed to it), then the amount which the plaintiff may claim will represent the amount of unpaid balance to which he himself is entitled; and the circumstances besides wore very peculiar. The principal defendants had obtained from the other co-sharers a remission of their rent, and this remission being obtained during an interval of time when the present plaintiff had been ousted from possession of his share on the ground that he had been dismissed or expelled from his office of Mohunt, the person who dismissed him joined with the other co-sharers in granting the remission. That being so, there really seem to be circumstances in the case which might have justified the bringing of this suit, even if the coincidence which I have mentioned between the amount paid and the amount of unpaid balance did not exist, and under any circumstances I should have thought the preferable course to take would be to allow the plaintiff to amend his plaint so as to make the suit for the whole amount of rent. Taking this view of the case, we think that the judgment of the District Judge is erroneous, and in so far as it reverses the judgment of the Munsif, it ought to be set aside, and the judgment of the Munsif restored with costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com