

B. Narabadeshwari Pd vs Sahib Singh And Ors. on 10 January, 1951

Equivalent citations: AIR1951ALL561, AIR 1951 ALLAHABAD 561

JUDGMENT

Mushtaq Ahmad, J.

1. This is a debt-lambardar's appeal in a suit for recovery of profits under Section 230, U. P. Tenancy Act for 1349 to 1351 Fasli.

2. In defence it was pleaded 'inter alia' that the claim, so far as 1349 Fasli was concerned, was barred by Order 2, Rule 2, C. P. C. This is the only question with which we are concerned in this appeal. The trial Ct, accepting this plea, dismissed the claim in regard to this particular years, though the claim for other years was decreed.

3. On appeal by the pltfs, the claim for this year also, that is 1349 Fasli, was allowed.

4. The only question, that we have to determine is whether the claim in regard to 1349 F. was or was not barred by Order 2, Rule 2, C. P. C. The lower appellate Ct, as its judgment shows, held that it was not barred because the pltfs, according to the learned Judge, had some justification in omitting to include the claim for 1349 Fasli in the previous suit which had been filed on 7-12-1942. That suit was in respect of the years 1342 to 1344 Fasli. The profits for 1348 Fasli had already fallen due on 1-8-1942 & yet no claim was made in respect of them in that suit. It is because of the pltfs omission to include a claim for the profits for 1349 F. in that suit that the bar of Order 2, Rule 2 was pleaded in this case. The lower appellate Ct rejected the plea, holding that the pltfs, being justified in omitting to include a claim for 1349 Fasli in the earlier suit, were entitled to claim the same in the present one.

5. This view cannot, in our opinion, be sustained. The Explanation to Rule 2 of Order 2, C. P. C. provides:

"For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action."

6. There can be no doubt that the debt as lambardar was under an obligation to pay the profits due to the co-sharers. On the one hand, the cause of action to recover such profits, would arise each year, so that with reference to different years there would, literally speaking, be different causes of action available to the co-sharers. All the same, the right to receive the profits from the lambardar in the

various years would itself be referable to a common obligation, arising out of the lambardar's liability to pay those profits by virtue of his position as such. It would thus be a case of successive claims, arising under the same obligation, within the meaning of the Explanation, & as such, they would all constitute one cause of action. In this view the pltfs had a single cause of action in the earlier suit to recover the profits for 1342 to 1344 Fasli as well as for 1349 Fasli, so that the claim for this last year was wrongly omitted in that suit.

7. Learned counsel for the applt relied on two cases of this Ct, one in 'Chedu Singh v. Mahatab Singh'. (1883) A WN 142 and the other in 'Girdhari Lal v. Khare Prasad', AIR (12) 1925 All 795: (88 I C 530). The former was based on a Calcutta ruling reported in 'Taruck Chunder v. Panchu Mohini Debya', 6 Cal 791: (8 C L R 297). These are authorities for the proposition that, where either the owner of the property could sue for rent or a co-sharer could sue for his share of the profits in respect of a number of years, but omitted to include the claim for a particular year, he was debarred by virtue of Order 2, Rule 2 (old Section 43) from claiming the same in a subsequent suit. The basis on which this bar was founded was the identity of the cause of action or the causes of action being referable to the same obligation, &, therefore, for all practical purposes as constituting a single cause of action.

8. Learned counsel for the pltf-resp relied on a case of this Ct in 'Ganga Prasad v. Dig Bijai Singh', 18 I C 288: (All). That was a case in which the claim was no doubt held as barred by Order 2, Rule 2. But the ground of the decision was that the payment of rent for which the subsequent suit was filed had been suspended when the earlier suit was brought, so that it could not be made a part of the claim in the earlier suit. This being so, it is obvious that the claim in the subsequent suit could not be possibly barred by Order 2, Rule 2. Learned counsel also pressed upon us the case cited by the learned Civil Judge, namely that of 'Ram Harakh v. Ram Lal', A I R (3) 1916 All 172: (14 A L J 257). That was a case in which, after a suit for possession by partition in respect of a certain property in Sultanpur had been decreed, another suit in respect of another property in Allahabad was filed only for partition, & it was held that the latter suit was not barred by Order 2, Rule 2. It was pointed out that, in view of the pleadings in the later suit, it could not have been maintained at Sultanpur at all. There is no such question or difficulty in the present case.

9. In view of all these considerations, we have come to the conclusion that the claim With regard to 1349 Fasli was barred by Order 2 Rule 2, C. P. C &, therefore, the judgment of the lower appellate Ct cannot be sustained.

10. Accordingly, we allow this appeal, set aside the decree of the lower appellate Ct & restore that of the Ct of first instance with costs.