

## Kailash Pat vs Goswami Brij Gopal And Anr. on 12 January, 1950

**Equivalent citations: AIR1950ALL405, AIR 1950 ALLAHABAD 405**

### JUDGMENT

Mushtak Ahmad, J.

1. This is a defendant's appeal in a suit for cancellation of a lease dated 8th May 1911, granted by one Lalta Prasad to the defendant-appellant. There was also a relief for possession.
2. The lease covered two plots, forming part of Khewat No. 26/1 of mahal Kalan Bangar in Bindraban, district Mathura, and it was for building purposes. Rs. 1,000 were paid under the lease as premium, and an annual rent of Rs. 10 was made payable by the lessee.
3. The plaintiff, a co-sharer in the plots, brought the suit for cancellation of the lease on the ground that Lalta Prasad, another co-sharer, had no right to grant it without the consent or authority of the remaining co-sharers. It is admitted that there are about seventy co-sharers, out of whom twenty-nine appear to have attested the deed of lease. It was the defendant's case that twenty, one out of the remaining co-sharers had received portions of the amount of the premium paid by the lessee.
4. The plaintiff had brought the suit as a representative suit under Order 1, Rule 8, Civil P. C., taking the necessary permission from the Court in that behalf. A number of pleas were taken in defence, but I am concerned only with one, namely, that the suit, as framed, was not maintainable under Order 1, Rule 8, Civil P. C.
5. The trial Court, rejecting the defence, decreed the suit in the terms of the relief, while the lower appellate Court modified that decree by converting it into a decree for joint possession.
6. The defendant filed this appeal against the appellate, decree, and the plaintiff, filed the cross-objection. Learned counsel for the appellant has argued that in view of the moderate number of the co-sharers in these plots, they could not be designated as "numerous" within the meaning of Rule 8 of Order 1, Civil P. C. It is also urged that at least those of the co-sharers who had attested the deed of lease, and those, who, according to the defendant lessee, had taken shares in the amount of the premium, could not be said to be "interested" in the suit. Therefore, it is contended the two essential conditions necessary to attract the application of Order 1, Rule 8, were absent in the present case. That is to say, neither the persons alleged to be interested in the suit could be rightly indicated as "numerous," nor could the aforesaid two groups of co-sharers be deemed to have the "same interest" in the suit as the plaintiff.

7. The word "numerous" in Order 1, Rule 8, Civil P. C. is by no means a term of art. It has an ordinary meaning implying a group of persons, such as would make it inconvenient to implead all of them individually. The word is not synonymous with "numberless" or "Innumerable". The true scope of it in each case must depend on its own facts, including not only the nature of the controversy but also the volume or quantum of the subject-matter in dispute, Again, while the number of "interested persons" may be regarded as "numerous" in a suit involving simple issues and touching a comparatively small property, the same may not deserve that appellation where the subject matter occupies a wider field or raises some momentous question of general importance. In *Abdul Ghani v. Subramania Chettiar*, A. I. R. (16) 1929 Mad. 44 : (107 I. C. 789), a hundred persons were held to be 'numerous' and in an English case which that ruling followed even thirty came within that expression.

8. In the present case the word must have reference to the entire body of co-sharers other than the lessor, inasmuch as they had not joined in the execution of the deed of lease and as such were "interested" in the suit, just as the plaintiff was. Whether the conditions provided in Order 1, Rule 8 are present or not, must be judged on the, allegations in the plaint as framed. In the plaint in this case the plaintiff put the lessor on one side, and all the other co-sharers including him self on the other as commonly aggrieved by the lessor's conduct in granting the lease. It was a plaint claiming relief for all those co-sharers in common with the plaintiff. I, therefore see no reason to disagree with the view taken by the learned Civil Judge that the suit was covered by Order 1, Rule 8, Civil P. O.

9. A few other points were also urged by the learned counsel for the appellant, but they had no substance. Accordingly, I dismiss this appeal with costs.

10. As regards the cross-objection filed by the plaintiff, in so far as the lower appellate Court had awarded a decree only for joint possession, learned counsel has argued that, where a co-sharer has transferred a joint property, as if he was the sole owner thereof, the other co-sharers are not bound by the transfer to any decree at all. He has relied on two cases of this Court, *Sher Mohammad v. Bharat Indu*, A. I. R. (15) 1928 ALL. 59 : (106 I. C. 656), and *Qutubuddin v. Mangala Dubey*, A. I. R. (22) 1935 ALL. 771 : (155 I. C. 829), in support of his contention. These cases fully support him on the point, and the plaintiff was, therefore, entitled to a decree for ejectment against the defendant lessee, though only for joint possession with the other co-sharers including the lessor.

11. I, therefore, allow the cross-objection with costs. Leave to appeal under the Letters Patent is refused.