

Allahabad High Court

Mt. Ram Kali vs Kamta Prasad And Ors. on 3 January, 1934

Equivalent citations: AIR 1934 All 404

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JUDGMENT Kendall, J.

1. This is an application for the revision of an. order of the Judge of the Small Cause Court of Mainpuri, returning the applicant's plaint for presentation in the proper Court. The case has some peculiar features. The plaintiff applicant sued for what is called her share of the profits of an occupancy holding, alleging that the defendants were in possession of the holding, that she was a joint occupancy tenant with them, and that she was entitled to a half share in the profits for the years in suit. The Judge of the Small Cause Court decided that he had no jurisdiction to entertain the suit and it has been contended in revision that he is wrong. On behalf of the applicant I have been referred to the case of *Amjad Ali v. Azizuddin* A.I.R. 1931 All. 551, in which Mr. Justice Niamatullah held that Article 31 of the first schedule of the Provincial Insolvency Act would not apply to a suit for mesne profits by persons in respect of their shares of an occupancy holding held in common by the parties. If in the present suit it had been established that the parties were common tenants of a holding, it might be held on the authority of that decision that the suit for a share of the profits would lie in a Small Cause Court. The defence however is in the first place that the plaintiff has nothing to do with the holding, and is therefore not a joint tenant with the defendants; and in the second place that even if the plaintiff could be held to be a tenant, her share would be not one half but $\frac{1}{5}$. It is true that jurisdiction has to be determined by an allegation in the plaint, and the allegation made by the plaintiff that she is a joint tenant. If, however, the suit is to be entertained by the Small Cause Court, the first issue that will have to be decided is, whether the plaintiff is a joint tenant with the defendants in the holding. That is not an issue that can be decided by the Small Cause Court. It can only be decided by a Revenue Court, and no machinery is provided by the Agra Tenancy Act for sending an issue of this kind arising between persons calling themselves tenants to the Revenue Court for decision. Section 273 of the Agra Tenancy Act only relates to questions arising between a defendant claiming to hold as the tenant of the plaintiff or of a person in possession holding from the plaintiff. It does not give the Civil Court any authority to refer an issue of this kind between co-tenants to the Revenue Court.

2. In the case of *Bhagwan Sahai v. Ram Chander* A.I.R. 1932 All. 693, on which the trial Court has relied, it was held that a tenant seeking a declaration of his right as tenant may sue in the Revenue Court, and it is claimed on behalf of the opposite party that the plaintiff's real object in the present proceedings is to obtain such a declaration. It is therefore argued with regard to the provisions of the explanation to Section 230 of the Tenancy Act that the present suit was rightly rejected by the Civil Court because adequate relief could be granted by the Revenue Court, although the plaint is worded in such a way that the relief appears to be on that might be granted by the Civil Court. It is perfectly true that the plaintiff-applicant might apply to the Revenue Court for a declaration, and it appears that she might in the alternative apply under Section 99 of the Tenancy Act for compensation for wrongful dispossession. In the first place she would be compelled, after obtaining her declaration, to sue in the Civil Court for her share of the profits, and in the second place she would be compelled to sue for possession. The procedure of applying for a declaration in the Revenue Court before she can

obtain the relief which she claims in the Civil Court may be a clumsy one, but so far as I can see it is the only legal way in which she can proceed.

3. I have been asked by the learned Counsel on behalf of the applicant to hold that as the plaint is worded as one for a share of profits it should be admitted in the Civil Court and then, if necessary, dismissed on the ground that the issue between the rival tenants cannot be decided in the Civil Court and cannot be referred to the Revenue Court. I am not prepared, however, to take this course. It would only lead to further difficulties, and in my opinion the real issues in the suit have to be decided in the Revenue Court. The decision of the trial Court, therefore, appears to me to be correct and the application for revision is dismissed with costs.