

(1922) 05 AHC CK 0023

Allahabad High Court

Case No: None

Sheo Narain

APPELLANT

Vs

Bala Rao

RESPONDENT

Date of Decision: May 4, 1922

Citation: (1922) ILR (All) 616

Hon'ble Judges: Lindsay, J; Gokul Prasad, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Lindsay and Gokul Prasad, JJ.

This appeal and the connected second appeal No. 24 of 1921 arise out of suits for profits brought by the plaintiff appellant against his brother, lambardar, defendant. The suits were for profits of two mahals for the years 1323, 1324 and 1325. The defendant pleaded in answer that he and his brother were members of a joint Hindu family and that such a suit was not maintainable.

2. The first court came to the conclusion that the parties were divided in status, and decreed the claim of the plaintiff in part for the periods in suit.

3. On appeal the learned Judge has come to the conclusion that the parties were joint in the year 1823 Fasli and has dismissed the claim for profits for that year. The names of the parties to the suit are entered on a moiety share in each of the two mahals and having regard to the view taken of Section 201(3) of the Tenancy Act by this Court, the claim of the plaintiff, whose name was entered on a moiety of the property, ought to have been decreed. All that the learned Judge says about this aspect of the case is that "the irrebutable presumption of Section 201(3) of the Tenancy Act ordinarily applicable under the decision of ILR All. 779, does not apply"; or, in other words, he seems to think that such a presumption is not to be applied in the case of a joint Hindu family. But he forgets that all that this presumption results in is to prevent persons from pleading that the family is a joint Hindu family as

against the entries in the khewat. So far as the Revenue Courts are concerned these entries are deemed to be true records for the purposes of suits under Chapter 11 of the said Act.

4. In our opinion the decree of the lower appellate court is based on a misapprehension of the effect of Section 201 of the Tenancy Act. In our view the decree of the first court was correct and has been wrongly interfered with. We therefore allow the appeal, set aside the decree of the lower appellate court and restore that of the court of first instance with costs in all courts.