

(1924) 02 AHC CK 0037

Allahabad High Court

Case No: None

Jwala Prasad

APPELLANT

Vs

Irshad Muhammad Khan

RESPONDENT

Date of Decision: Feb. 15, 1924**Citation:** AIR 1925 All 50 : (1924) ILR (All) 512**Hon'ble Judges:** Piggott, J; Grimwood Mears, J**Bench:** Division Bench**Final Decision:** Disposed Of

Judgement

1. This appeal has been heard ex parte. The suit was one brought under the provisions of Section 160 of the Agra Tenancy Act (No. II of 1901). The plaintiff during the years to which the Suit refers stood recorded as the usufructuary mortgagee of a share of 16 biswas and odd in a certain mahal. By reason of this record he was compelled to pay the whole of the land revenue demand in respect of the said share.

2. As a matter of fact a portion of the mortgage had been redeemed and the plaintiff was really in possession as mortgagee over a share of 81 biswas only. The defendant was the co-sharer in possession of the remainder. The Courts below differed on the plain question of fact, namely, whether the plaintiff had or had not during the years in suit enjoyed possession over the entire share of 16 biswas and odd. We do not agree with the learned Judge of this Court, where he appears to hold that the lower Appellate Court failed to determine this point. We have no doubt that the learned District Judge has decided that the plaintiff during the years in suit was in possession only of a share of 8 biswas 5 biswansis.

3. The learned Judge of this Court, however, in reversing the decision of the lower Appellate Court, was influenced by a curious argument addressed to him with respect to the wording of Section 201 of the Agra Tenancy Act (No. II of 1901). What the plaintiff had to show was that as a matter of fact he was a co-sharer who had

paid arrears of revenue on account of another co-sharer. Because the revenue record during the years in suit was incorrectly framed, the plaintiff did not on the face of that record appear to have paid any revenue except that which was due from the share recorded in his name as usufructuary mortgagee.

4. His position, therefore, was that of a co-sharer not recorded as having the particular proprietary right which would entitle him to maintain the suit brought by him. In reality his case fell under the first clause, and not under the third clause of Section 201 of the Tenancy Act. The learned District Judge had jurisdiction to inquire into this matter and to determine it. His finding on the question of possession is final.

5. We accept this appeal, set aside the order of the learned Judge of this Court and restore the decree of the lower Appellate Court. The costs of both hearings in this Court must be borne by the defendant.