

(1878) 04 AHC CK 0006

Allahabad High Court

Case No: None

Kaleshar Prasad

APPELLANT

Vs

Jagan Nath and
Another

RESPONDENT

Date of Decision: April 25, 1878

Citation: (1875) ILR (All) 650

Hon'ble Judges: Pearson, J; Oldfield, J

Bench: Division Bench

Final Decision: Disposed Of

Judgement

1. The plaintiff instituted two suits at the same time, one against Jagan Nath, lambardar, for profits of the mauza for 1281 and 1282 fasli, the other against Jagan Nath and another share holder, Bala Nand, for a settlement of the account of sir-land held jointly by the parties for 1281, 1282, and 1283 fasli. This last suit is the subject of appeal, and was dismissed with reference to the provisions of Section 7 of Act VIII of 1859. The provisions of this section do not appear to us to apply. The suit which is the subject of appeal is for an adjustment of the account of profits of sir-land between not only the plaintiff and Jagan Nath, but between them and a third shareholder who is also a defendant, and it is not clear that the accounts of this sir-land are included in the general account of the profits of the village for which the lambardar is responsible to account to the plaintiff, so as to give in both suits the same cause of action to the plaintiff against Jagan Nath. But were it so, the suit would not be necessarily unmaintainable against Bala Nand, and besides we should hesitate to rule that the provisions of Section 7 of Act VIII of 1889 are applicable to such a case as this. Here the plaints in the two suits were filed at the same time. We cannot say that one suit has a priority over the other in point of time. The claims were divided for the convenience of trial, but there was no relinquishment of a claim, and there will be no question of entertaining a suit after such relinquishment or omission within the meaning of Section 7. There was no institution and

entertainment of a suit after one had been already instituted and determined. The suits were not successive, but simultaneous, and to allow the objection, which can only be one of form and not of substance, would be to strain the obvious object of Section 7, which is not to allow persons to be harassed by successive claims. If the Court in which the complaints were filed considered they should have been tried together, the proper course was to allow one of the complaints to be amended, so as to combine both claims. As this suit has not been tried, and is one for a Revenue Court to determine, we reverse the decisions of the Courts and remand the case for trial on the merits to the Court of First Instance. Costs to abide the result.