

(1880) 01 CAL CK 0009

Calcutta High Court

Case No: None

Gunganarain Sirkar and Another

APPELLANT

Vs

Sreenath Banerjee

RESPONDENT

Date of Decision: Jan. 15, 1880

Citation: (1880) ILR (Cal) 915

Hon'ble Judges: Tottenham, J; Jackson, J

Bench: Division Bench

Judgement

Jackson, J.

Upon the precise question raised in this appeal, no previous ruling has been brought to our notice. The plaintiffs are some of several co-sharers who, indeed, owned much the larger portion of the estate. The defendant Sreenath holds land under all the co-sharers, and he previously paid rent to the plaintiffs according to the shares which they from time to time claimed; but in the present suit they claimed a larger share than they appear to have received before,—that is, they claimed fourteen annas, whereas in previous years they obtained decrees for thirteen and-a-half annas, for eleven annas eighteen gandas, and for thirteen and three-fourth annas. In this state of the facts the Judge observes: "It still remains for the plaintiffs to prove that their share is fourteen annas;" and further on: "It seems to me, therefore, that the plaintiffs having failed to prove that they have been collecting a specific fourteen annas share of the rent before, cannot succeed in the present suit, merely by reason of making certain other co-sharers defendants in the suit." The co-sharers, as stated by the Judge, are parties to the present suit, and they have not appeared at any stage of the litigation. It is contended now, in support of this judgment, that, in the circumstances, the plaintiffs were bound to sue for the whole rent, making the other co-sharers parties defendant. That course, however, is only laid down for cases where there has been no previous payment by sharers, and where the plaintiff seeks for the first time to obtain a decree in respect of what is due to him; but in the present case there have been previous payments: and it appears to us that it was not necessary to take that course. Besides, the co-sharers

being the only persons interested in disputing the amount of the plaintiffs' share, have not entered appearance, and have not questioned the share which the plaintiffs claim. It seems to us, therefore, that there was no necessity for raising an issue as to the amount of that share, and the plaintiffs, consequently, were not bound to offer proof, because, as before observed, the only persons interested in raising that question having acquiesced in the plaintiffs' statement, and being bound by the decision, the tenant-defendant ran no risk of being called upon to pay again any part of the share adjudged to the plaintiffs. It appears that the defendant had not been served with notice to pay rent as for the share of fourteen annas. If in these circumstances the defendant simply answered that he had paid or was willing to pay and now paid into Court the amount last recovered by the plaintiff, which appears to have been eleven annas eighteen gandas three krants, the plaintiffs' suit might, with some justice, have been dismissed, or at any rate, they would have a decree for no more than what would appear to be so payable. But he has not taken that course. He has not paid a single pice of the rent of the year. It appears to us, therefore, that the plaintiffs are entitled to a decree as for fourteen annas share of this rent. As the plaintiffs have not, given notice to pay fourteen annas, we think there should be no costs. Each party will pay his own costs throughout.