LETTERS PATENT APPEAL.

Before Rankin C. J. and C. C. Ghose J.

1932

July 6.

RADHAKANTA PAL

v.

MANOMOHINEE PAL.*

Co-sharer—Cultivation of joint land without denying co-sharer's title—Suit for damages against such co-sharer by the other co-sharer, if maintainable.

Where a co-sharer, without denying the title of the other co-sharer, cultivated the whole piece of joint land himself and paid only a small sum of money as a share of the profits to the other co-sharer,

held that the former was not liable to the latter in damages. The other co-sharer could get relief in a suit for partition.

LETTERS PATENT APPEAL by the defendant.

This appeal arose out of a suit filed by a childless Hindu widow against the brothers of her deceased husband and other members of the joint family for recovery of damages on account of the principal defendants having appropriated her share of the usufruct of the joint family property during the years 1332 and 1333 B.S. The trial court dismissed the suit on *inter alia* the grounds that it was not maintainable, as the plaintiff never tried to exercise physical possession in any portion of the joint land and that the defendants never challenged the plaintiff's title to the same. On appeal, the learned Subordinate Judge reversed the decision of the trial court and decreed the suit in favour of the plaintiff. On Second Appeal to the High Court by the defendant, Patterson J. sitting singly upheld the decision of the Subordinate Judge. Thereupon, the defendant Radhakanta Pal, preferred this appeal under section 15 of the Letters Patent.

Ramdayal De for the appellant.

Nagendranath Chaudhuri for the respondent.

*Letters Patent Appeal, No. 1 of 1932, in Appeal from Appellate Decree, No. 2681 of 1929.

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RANKIN C. J. In my opinion, this appeal must be allowed. I am somewhat sorry for the plaintiff; she does not appear to have been treated very well; but it is necessary that the elementary law with reference to the rights of joint tenants under Hindu law should be kept clear and properly applied.

The position shortly is this: The plaintiff is the widow of one son. The defendants are her late husband's brothers. The plaintiff's name is Manomohinee and her husband's name is Kalikanta. Kalikanta died in 1330, and, as often happens, his widow left her husband's joint family house soon after his death, namely, in 1331, and went to live in her father's place. She brought the suit on the 11th May, 1927, and the case she made by her plaint was that her husband had a certain share in the family lands, that she was his sole heir and that the principal defendants, finding the plaintiff a helpless woman, continued to treat her badly and so the plaintiff came to the house of her father in 1331 and had been residing there. The plaint goes on to say:—

> Since then, taking advantage of their being on the properties, the principal defendants have been very unjustly appropriating to themselves almost all the fruits, crops and the like, nominally giving something to the plaintiff's father and brothers when they went to possess all the said properties on behalf of the plaintiff.

It says that if any competent male person could possess the properties by remaining on the same the plaintiff could get at least Rs. 160 as profits from the properties in 1332 and 1333. The plaint then goes on to use some language about misappropriation and so on and it says in the end:

> None of the defendants denies the title or possession of the plaintiff's husband or of the plaintiff; but, taking advantage of the helpless and miserable condition of the plaintiff, they having merely appropriated the plaintiff's share of the produce along with their own share of the same, the plaintiff has instituted this suit in the present form for compensation only in respect of the produce.

Now, the meaning of the plaint is that her title as the widow of their brother is not denied by her

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brothers-in-law, that her brothers-in-law, far from denying that, have given something to her in respect of her share of the usufruct, that they have given her very little, that she had to go to her father's house because she could not get on with her husband's family, that she was unable to cultivate herself, that the defendants have cultivated her part and that the defendants have wrongfully cultivated her part and have wrongfully refused to hand over the profits to her.

In my judgment, the learned Munsif took the right view of this case at the beginning. He says that the plaintiff's cause of action according to her own narrative does not entitle her to damages. He says:

> The plaintiff clearly states in her plaint that the defendants never challenged her title or her right to exercise possession in the joint lands. The only thing that she says against them is that they exercise physical possession in the lands as they have every opportunity to do so, while she herself, being a helpless woman living at a distance from the lands, cannot manage to exercise such possession in the lands and take her fair share of the usufruct.

There is no doubt at all that, if the plaintiff is not in a position to go and cultivate the lands, the defendants do nothing wrong by going there and cultivating the same. They are quite entitled to cultivate the whole land as long as the plaintiff is not prepared to cultivate her share.

The question is—is it the right of one co-owner, who does not find it convenient to possess or cultivate joint land, to say to the other "either you must not "cultivate my share at all or if you do you must hand "over the whole nett produce to me?" In my judgment, no such right has ever been laid down as a right of the owner of joint property and it seems to me that the plaintiff makes no case for damages, because she does not show that the defendants have done anything wrong.

The learned Subordinate Judge proceeded, to begin with, to enlarge the finding of the Munsif and the allegation in the plaint. The allegation in the

plaint is that the defendants continued to treat the plaintiff badly, that is to say, I have no doubt, they nagged her and might have done so so as to make her life quite intolerable. It does not appear that they have done anything illegal. The Munsif says:

> Though I see no reason to hold that the plaintiff was treated by the defendants with positive cruelty, I have no doubt in my mind that she did not get such treatment as her condition deserved. I find it impossible to believe that a woman in such a position would have left the house without substantial grievance.

That, certainly, is quite enough to show that the lady acted quite reasonably and sensibly in leaving this house and going to that of her father's. The Subordinate Judge says:

> The Munsif also found that the plaintiff had to leave her husband's house owing to the ill-treatment of the defendants which might not amount to a positive cruelty. This finding too was not challenged before me.

It appears to me that the learned Subordinate Judge has somewhat exaggerated the effect of the Munsif's finding. In any case, if the position was such that the lady felt her life intolerable and chose to go to her father's house, that does not, in any way, impose a duty upon the defendants to cultivate her share of the land and hand over to her the nett profits thereof. It was quite clear that they never denied their title. She has not shown at all that they ever refused to let her come and cultivate and does not even say that they have refused to give her any part of the profits. Of course, she can sue for partition.

It does not seem to me that there is any foundation for the case which the plaintiff brought into Court. I, therefore, think that the appeal should be allowed and the decision of the learned Munsif restored and the suit dismissed with costs in all the courts.

GHOSE J. I agree.

Appeal allowed.

A. K. D.