

1882
July 6.

REVISIONAL CIVIL.

Before Mr. Justice Brodhurst and Mr. Justice Tyrrell.

MANOHAR DAS (DEFENDANT) *v.* MANZUR ALI (PLAINTIFF).*

Lease - Suit by one of several joint lessors for his share of rent - Co-sharer.

One of several joint lessors of certain land sued the lessee for his share of the rent payable under the lease to all the lessors, making the other lessors defendants. *Held* that the suit was not maintainable, and the making of the other lessors defendants did not cure the defect in the suit.

THE plaintiff in this suit, which was instituted in the Court of Small Causes at Allahabad, claimed his share of the rent of certain land. The plaintiff was one of the representatives in title of one Shahamat Ali and one Imam Bakhsh, who in the year 1823 gave a Mr. Mathews a lease of the land. Mr. Mathews executed in favour of those persons jointly a kabuliyat, agreeing to pay them a certain sum annually as rent for the land. The principal defendant in the suit was Manohar Das, who was a joint owner of the land with the plaintiff, and the representative in title of Mr. Mathews the original lessee of the land. The remaining defendants in the suit, seventeen in number, were also joint owners of the land with the plaintiff and the defendant Manohar Das. The defendant Manohar Das set up as a defence to the suit that one of several joint lessors of land was not competent to sue the tenant for his share of the rent payable by the tenant to the joint lessors. The Court of first instance held that in the present case the plaintiff's suit was maintainable, because his share of the rent could be accurately determined; and proceeding to determine such share, gave the plaintiff a decree for the same.

The defendant Manohar Das applied to the High Court for revision under s. 622 of the Civil Procedure Code of this decree, again contending that the suit was not maintainable, as one of several joint lessors of land was not competent to sue the tenant for his share of the rent payable by the tenant to the joint lessors.

Mr. *Spankie*, for the defendant.

* Application No. 117 of 1882, for revision under s. 622 of the Civil Procedure Code of a decree of R. D. Alexander, Esq., Judge of the Court of Small Causes at Allahabad, dated the 14th January, 1882.

The *Senior Government Pleader* (Lala *Juala Prasad*), for the plaintiff.

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The judgment of the Court (BRODTHURST, J., and TYRRELL, J.) was delivered by

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TYRRELL, J.—The first plea taken by the petitioner must be allowed. The plaintiff had no right to sue the lessee for a portion only of the lump rent payable by the petitioner under one single and entire obligation to all the lessors. The suit was based on the *kabuliyat* of 1823, under which the predecessors in title of the petitioner entered into this obligation to the predecessors of the plaintiff. It is not proved, and indeed in a suit thus founded it is hard to conceive how evidence of such a matter could have been admitted, that any valid and subsisting agreement was made by which an exact and ascertained amount of the plaintiff's interest in the whole rent payable by the petitioner was exigible separately by the plaintiff from the lessee. Under such circumstances it is obvious that this claim for a share arbitrarily fixed, it would seem, by the plaintiff is not rightly sustainable against the petitioner. It is true that the plaintiff has brought his co-sharers on the record as defendants: but this alone would not cure the defect in the suit as brought. These co-defendants have not appeared in the suit, and the Court was not in a position to come to a safe or satisfactory finding as to the real extent of the plaintiff's interest in the rent, that is to say, of the petitioner's exclusive liability to him, if any such may be taken to have existed. The plaintiff might have sued alone for all the rent, and possibly the petitioner would have made no objection to such a claim. The plaintiff as undoubtedly one of several joint co-lessors could have given a good acquittance to the lessee for all the rent due from him for his non-agricultural holding: but it is clear that a payment of an arbitrarily assumed fraction of the lump rent might have left the lessee still liable to other lessors for a sum greater than the difference between the sum so paid to the plaintiff and the whole rent due on the lease. We allow the first plea, and therefore cancel the decree below with costs.

This finding renders a consideration of the other pleas unnecessary. But we may say that they are none of them sustainable.

Application allowed.