

As the case of such an objection does not strictly fall within the letter of the abovementioned article, we are of opinion that no court-fee can properly be levied under it. The Patna High Court in *Damodar Prasad v. Masudan Singh* (1) and the Allahabad High Court in *Muhammad Salim-Ullah Khan v. Khalil-ur-Rahman* (2) have adopted the same view. We are in entire agreement with the reasoning contained in these cases. We accordingly hold that no court-fee is payable in respect of a memorandum of objection filed under order XLI, rule 26 of the Code of Civil Procedure.

1935

SITA RAM
v.
SUKHRAJ
SINGH

*Srivastava
and Ziaul
Hasan, J.J.*

APPELLATE CIVIL

Before Mr. Justice E. M. Nanavutty

SALIK RAM (DEFENDANT-APPELLANT) v. BHUDAR SINGH
(PLAINTIFF-RESPONDENT)*

1935
November, 27

Oudh Rent Act (XXII of 1886), section 108(15)—Suit for profits—Plaintiff recorded as co-sharer—Right as co-sharer contested—Revenue Court, whether competent to go behind record and try question of proprietary title.

Where in a suit for profits the plaintiff is recorded as having proprietary title entitling him to institute a suit the Revenue Court is not competent to go behind the record and receive evidence and itself try the question of proprietary title. *Gajadhar Singh v. Har Prasad* (3), and *Durga Prasad v. Hazari Singh* (4), relied on.

Mr. P. N. Chowdhri, for the appellant.

Mr. N. Banerji, for the respondent.

NANAVUTTY, J.:—This is a defendant's appeal against an appellate judgment and decree of the learned District Judge of Sitapur upholding the judgment and decree of the Honorary Assistant Collector of Sitapur.

*Second Rent Appeal No. 26 of 1934, against the decree of Chaudhri Akbar Husain, I.C.S., District Judge of Sitapur, dated the 21st of March, 1934, upholding the decree of K. B. Aga Syed Fateh Shah, Honorary Assistant Collector, 1st Class, Sitapur, dated the 9th of September, 1931.

(1) (1928) A.I.R., Pat., 85.

(2) (1932) I.L.R., 54 All., 465.

(3) (1926) A.I.R., Oudh, 462.

(4) (1911) I.L.R., 33 All., 799.

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SALIK RAM
v.
BHUDAR
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Nanavutti,
J.

This case arises out of a suit for profits brought by the plaintiff Bhudar Singh in respect of village Saraura for the years 1336 Fasli to 1338 Fasli. The trial Court held that, although the name of Salik Ram was entered in the khewat as the owner of 2 bighas 9 biswas of cultivated land in the village in suit, he really had no right to the ownership of that land since Rameshar Bakhsh Singh, through whom Salik Ram claims the land in suit, did not have any land left in the village to sell to Salik Ram at the time when the sale-deed in favour of the latter was executed, namely on the 20th of March, 1925. A sum of Rs.8, which Salik Ram is said to have realised from a tenant of the land, was therefore decreed in favour of the plaintiff to make up the deficiency in his share of the profits. Salik Ram appealed, but the learned District Judge upheld the decision of the trial Court and dismissed the appeal. Salik Ram came to this Court in second appeal, and, by his order dated the 8th of December, 1933, the late Honourable Chief Judge of this Court remanded the case to the lower appellate Court under order XLI, rule 23 of the Code of Civil Procedure for decision in the light of the observations made by him. The learned District Judge on remand again took the view that, though Salik Ram is recorded as a co-sharer in the village to the extent of 2 bighas 9 biswas of land and mutation has been effected in his favour on the basis of the sale-deed by Rameshar Bakhsh Singh, yet the sale-deed conferred no rights whatsoever on Salik Ram because Rameshar Bakhsh Singh had no right left in the village which he could sell, and therefore the sale-deed as well as the order of mutation in favour of Salik Ram were nullities and worthless. The learned District Judge has held that the fact of a wrong entry in the khewat can be no justification for giving effect to a sale-deed which is found to be void.

Salik Ram has appealed against this decision, and on his behalf his learned counsel has argued that it was not open to the Honorary Assistant Collector or to the learned District Judge to question the entry in the khewat

showing Salik Ram as owner of 2 bighas 9 biswas of land in the village in question, and in support of his contention a ruling reported in *Gajadhar Singh v. Har Prasad* (1) has been cited, in which it was held that it was sufficient for the plaintiff, in order to establish his title to the share of profits, to prove that his name stood recorded in the khewat, and that the Revenue Court need not go behind the entries in the revenue papers in deciding the case. He has also cited a Full Bench decision of the Allahabad High Court reported in *Durga Prasad v. Hazari Singh* (2), in which it was held by five learned Judges of the Allahabad High Court that in a suit instituted under the provisions of the Agra Tenancy Act (which are analogous to the Oudh Rent Act) where the plaintiff is recorded as having proprietary title entitling him to institute a suit, the Revenue Court is not competent to go behind the record and receive evidence and itself try the question of proprietary title. I am in entire agreement with this Full Bench decision of the Allahabad High Court.

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 J.

In the present case the lower Courts were not competent to enter into the question of the validity of the title of Salik Ram under the sale-deed or to question the correctness of the entry in the khewat showing Salik Ram as owner of the 2 bighas and 9 biswas of cultivated land. That being my view of the matter, this appeal must succeed.

I accordingly allow this appeal, set aside the judgment and decree of the lower appellate Court, and modify the judgment and decree of the trial Court to this extent that I dismiss the plaintiff's suit as against Salik Ram. The appellant Salik Ram will get his costs throughout.

Appeal allowed.

(1) (1936) A.I.R., Oudh, 462.

(2) (1911) I.L.R., 33 All., 799.