

seek his remedy by suit. There is no evidence that the defendants Raghū Nath and Khuman Singh, who have not defended the suit, have ever been in possession of the property in suit under the sale-deed of the 31st July, 1833. The defence which the lower Courts accepted must be rejected as untenable. Reversing the decree of the lower Court in so far as it dismisses the claim of the plaintiffs, appellants, we decree this appeal and claim with costs in both Courts.

Appeal allowed.

APPELLATE CIVIL.

Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Pearson.

MUHAMMAD ALI (PLAINTIFF) *v.* KALIAN SINGH (DEFENDANT).*

*Suit for Profits—Sir-land—Ex-proprietary Tenant—Rent—Act XVIII of 1873
(North-Western Provinces Rent Act), ss. 7, 14.*

A certain mahal, of which the plaintiff in this suit claimed a one-third share of the profits for a certain year, belonged in equal shares to the defendant (lambardar), and S and R, his two brothers, who held certain sir-land in partnership. The plaintiff had acquired the share of S by auction-purchase, S thus becoming an ex-proprietary tenant. The sir-land was not included in the rent-roll of the mahal, but was admitted by the defendant to be assessable with rent at a certain rate per bigha. *Held* that, whatever might be the course proper to be taken for the purpose of assessing such sir-land or S's share of it with rent, and notwithstanding that such course had not been taken, the plaintiff was entitled in this suit to claim and obtain his share in the profits of the sir-land.

THIS was a suit under Act XVIII of 1873 for profits. Sultan Singh, Kalian Singh, and Rodra Singh were the owners of a certain mahal in equal shares. They held the sir-land appertaining to the mahal, upon which no rent had been assessed, as co-parceners in equal shares. Sultan Singh's interest in the mahal had been purchased by the plaintiff in this suit, who now claimed from Kalian Singh, as lambardar, a one-third share of the profits of the mahal for the year 1283 fasli. In determining what was due to the plaintiff the Court of first instance held that the plaintiff was entitled to a one-third share of the rent assessable upon the sir-land. This land the defendant admitted to be assessable with rent at the rate

* Second Appeal, No. 192 of 1878, from a decree of S. Melville, Esq., Judge of Meerut, dated the 1st December, 1877, modifying a decree of M. S. Howell, Esq., Assistant Collector of Bulandshahr, dated the 25th April, 1877.

1878

ALI MUHAM-
MAD
v.
LALTA
BAKSHI.

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1873

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of five rupees per bigha, and the Court accordingly allowed the plaintiff one-third of the assessable rent less four annas in the rupee, a deduction which it made, with reference to s. 7 of Act XVIII of 1873, in view of the fact that Sultan Singh was an ex-proprietor. On appeal by the defendant the lower appellate Court held that, as the sir-land had not been assessed under s. 14 of Act XVIII of 1873, no allowance could be made to the plaintiff on account of it in determining the profits due to him.

The plaintiff appealed to the High Court.

Munshi *Hanuman Prasad* and *Shah Asad Ali*, for the appellant.

The *Junior Government Pleader* (*Babu Dwarka Nath Banarji*), for the respondent.

The judgment of the Court was delivered by

PEARSON, J.—It appears that the mahal of which the plaintiff claims one share of the profits of 1233 fasli belonged in equal shares to the defendant and his two brothers, who held 159 bighas and 9 hiswas of land as sir in partnership. The plaintiff recently acquired the share of one of the brothers by name Sultan Singh by purchase at auction. The sir-land is not included in the rent roll, but is admitted by the defendant to be assessable at five rupees per bigha. The Court of first instance considered the plaintiff to be entitled to a third of the assessable rent, after making the deduction of four annas per bigha required by s. 7 of Act XVIII of 1873 in favour of an ex-proprietary tenant. The lower appellate Court has ruled that he is not entitled to claim a share of the profits from the sir-land aforesaid because it has not been assessed with rent under s. 14 of the Act above-mentioned. The special appeal calls in question the correctness of the ruling. The section on which it purports to be based provides for the enhancement or determination of the rent of an ex-proprietary tenant. How it would possibly be applied in a case like the present in which Sultan Singh has no separate holding but holds jointly with his brothers the sir-land aforesaid, it is not now necessary to discuss. There is some show of reason in the appellant's contention that, if action in the matter should be taken under the section, it ought to be taken by the defendant who is the lambardar of the mahal.

But whatever may be the course proper to be taken for the purpose of assessing the sir-land or Sultan Singh's share of it with rent, we are not prepared to admit that, because such course had not been taken, the plaintiff is debarred from claiming and obtaining his fair share in the profits of the sir-holding. To this he seems entitled in reason and equity, and we decree the appeal with costs, reversing the lower appellate Court's decree and restoring that of the Court of first instance.

Appeal allowed.

1878

MUHAMMAD
ALI
v.
KALIAN
SINGH.

APPELLATE CIVIL.

1878
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Before Mr. Justice Pearson and Mr. Justice Olipheld.

PHUKAR SINGH AND OTHERS (PLAINTIFFS) v. RANJIT SINGH AND
OTHERS (DEPENDANTS),*

Hindu Law—Mitakshara—Inheritance—Stridhan.

Immoveable property inherited by the paternal grandmother from the grandson does not rank as *stridhan* and on her death devolve as such on her heirs, but devolves on her death on the heirs of the grandson.

THIS was a suit for the possession of certain immoveable property, being the estate of one Sardar Singh, who died on the 25th October, 1861, without leaving any issue. His paternal grandmother, Muna Kuar, succeeded to his estate in the absence of nearer heirs. She died on the 30th September, 1873. This suit was instituted on the 14th July, 1876, in which the plaintiffs claimed as heirs of Sardar Singh. The lower appellate Court reversed the decree which the Court of first instance gave the plaintiffs and dismissed the suit, on the ground that it was barred by limitation. The plaintiffs appealed against the decree of the lower appellate Court to the High Court. The remaining facts of the case are sufficiently stated for the purposes of this report in the judgment of the High Court.

Mr. *Chatterji* and Pandits *Bishambhar Nath* and *Ajudhia Nath*, for the appellants.

* Second Appeal, No. 151 of 1878, from a decree of J. H. Feinsep, Esq., Judge of Cawnpore, dated the 26th January, 1878, reversing a decree of Babu Ram Kali Chaudhri, Subordinate Judge of Cawnpore, dated the 19th April, 1877.