

refused to perform his contract to submit to arbitration. And one of the arbitrators, a witness in this case, has sworn that the arbitrators did not decide the case because "the parties were contentious among themselves." The Judge, in appeal, held that the mere act of filing this suit on the part of the plaintiff is tantamount to a refusal to perform his contract in the sense of s. 21 of the Specific Relief Act. We cannot take this view; and we hold that the contract, the existence of which would bar a suit under the circumstances contemplated by this section, must be an operative contract and not a contract broken up by the conduct of all the parties to it. We allow the appeal, and setting aside the decree of the lower appellate Court, remit the appeal for determination on the merits, under s. 562 of the Civil Procedure Code. Costs will be costs in the cause.

Appeal allowed.

Before Mr. Justice Brodhurst and Mr. Justice Tyrrell.

DHANAK SINGH AND OTHERS (DEFENDANTS) v. CHAIN SUKH (PLAINTIFF).*

Lambardar and co-sharer—Suit by co-sharer for profits—Burden of proof—

Act XII of 1881 (N.-W. P. Rent Act), s. 209.

When a co-sharer claims a dividend on the full rental of the mahál, and the lambardár pleads in reply that the actual collection fell short of that rental, the burden of proof lies on the co-sharer to show that the deficient collection was attributable to the conduct of the lambardár, in the sense of s. 209 of the N.-W. P. Rent Act (XII of 1881), before he can succeed in getting a decree for a sum in excess of the actual collections.

THE plaintiff in this suit, a recorded co-sharer in a mahál, sued the defendant, the lambardár, for his share of the profits, claiming in respect of the full rental of the mahál. The Assistant Collector trying the suit gave the plaintiff a decree for profits calculated on what the defendant and the patwári said had been collected, on the ground that it was for the plaintiff to prove that more was collected, or that the defendant was able to collect more, which he had not done. On appeal to the District Court the plaintiff contended that he was entitled to a share of profits calculated on the full rental of the mahál, and that if the lambardár asserted that he had collected less than the full rental, the burden of proving that fact rested

* Second Appeal No. 160 of 1885, from a decree of C. J. Daniell, Esq., District Judge of Farukhabad, dated the 12th November, 1884, modifying a decree of Pandit Maháraj Narain, Assistant Collector of the first class, Farukhabad, dated the 29th March, 1884.

1885
TAHAL
v.
BISHENHAR.

1885
December 12.

1885
 DHANAK
 SINGH
 v.
 CHAIN SEKH.

on him, and also of showing that he was unable to collect the full rental owing to circumstances which would relieve him of the responsibility of accounting to the shareholders for the full rental. The District Judge allowed this contention; and, as the defendant had not proved that he had not collected the full rental, and had not shown that he was unavoidably prevented from collecting, he gave the plaintiff a decree for the amount he claimed.

The heirs of the lambardár appealed to the High Court.

Mr. Carapiet, for the appellants.

Munshi Hanuman Prasad and Munshi Madho Prasad, for the respondent.

BRODHURST and TYRRELL, JJ.—The burden of proof has been wrongly laid by the appellate Court on the lambardár in this case. When a co-sharer claims a dividend on the full rental, and the lambardár pleads in reply that the actual collection fell short of that rental, it is incumbent on the co-sharer to show that the deficient collection was attributable to the conduct of the lambardár in the sense of s. 209 of the Rent Act, before he can succeed in getting a decree for a sum in excess of the actual collections. The Court below has ruled erroneously to the contrary effect; and we must modify his decree to this extent.

The appeal is allowed, with costs in proportion to the amount by which the decree will be thus reduced.

Appeal allowed.

Before Sir W. Comer Petheram, Kt., Chief Justice, and Mr. Justice Oldfield.

1885
 December 12.

CHHIDDU (DEFENDANT) v. NARPAT AND OTHERS (PLAINTIFFS). *

Jurisdiction—Civil and Revenue Courts—Suit by lessee of occupancy-tenant for recovery of possession—Act XII of 1881 (N.-W. P. Rent Act), s. 95 (a).

S. 95 (a) of the N.-W. P. Rent Act (XII of 1881) is applicable to a suit by the lessee of an occupancy-tenant to recover possession of the land under the lease, from which the lessor has ejected him; and such a suit is exclusively cognizable by the Revenue Courts. *Muhammad Zaki v. Hasfat Khan* (1) and *Ribban v. Partab Singh* (2) distinguished.

* Second Appeal No 159 of 1885, from a decree of Maulvi Muhammad Abdul Basit, Subordinate Judge of Mainpuri, dated the 17th September, 1884, reversing a decree of Maulvi Sakhawat Ali, Munsif of Etah, dated the 27th June, 1884.

(1) Weekly Notes, 1882, p. 61. (2) I. L. R., 6 All., 81.