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Worley (1). In our opinion it was never intended by the Legislature that a man should not get an injunction unless his property would be practically destroyed if the injunction were not granted. Here there was substantial injury and wrongful injury to the plaintiff's rights. The plaintiff was entitled to the injunction which he got. We dismiss this appeal with costs.

Appeal dismissed.

FULL BENCH.

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January 22.

Before Sir John Edge, Kt., Chief Justice, Mr. Justice Knox, Mr. Justice Banerji, and Mr. Justice Aikman.

SRI KISHEN LAL (DEFENDANT) *v.* ATMA RAM (PLAINTIFF).*

Principal and agent—Lambardar and co-sharer—Lambardar collecting rents for co-sharer—Suit by pre-emptor to recover profits accruing between the date of his decree and the time when he obtained mutation of names.

Held that a pre-emptor who had obtained a decree for pre-emption in respect of a share in a pure zamindari village could not successfully maintain a suit against the judgment-debtor co-sharer for the profits of the pre-empted share accruing between the date of the original decree and the date of his obtaining mutation of names, such profits having been collected by the lambardar but not paid over to the judgment-debtor; inasmuch as neither could the lambardar be considered as an agent of the co-sharer, whose possession of the profits was the possession of his principal, nor was there any obligation on the co-sharer to collect the profits and hold them to the use of the plaintiff.

In this case Atma Ram, the plaintiff, brought a suit for pre-emption of certain property of which Sri Kishen the defendant was the vendee. The suit was decreed, and the decree became final in December 1891, when the case was decided by the appellate court. The plaintiff had, however, in March 1890 deposited in court the pre-emptive price according to the decree of the court of first instance.

The suit, out of which this appeal has arisen, was brought by the pre-emptor Atma Ram to recover from the vendee profits of

* Appeal No. 35 of 1895, under section 10 of the Letters Patent.

(1) L. R., 26 Ch. D., 585.

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the pre-empted property from the time when he paid in the pre-emption price down to the date of his actually getting mutation of names in his favour on the 10th of May 1882.

The Court of first instance (Munsif of Phaphund) dismissed the suit, finding that the profits claimed had never been received by the vendee, but that they had remained in the hands of the lambardar, from whom the plaintiff might, if he had chosen to take the necessary steps, have recovered them.

The plaintiff appealed, and the lower appellate Court (Additional Subordinate Judge of Mainpuri) dismissed the appeal and confirmed the decree of the Munsif.

From this decree the plaintiff appealed to the High Court. The appeal came before a single Judge, who, on the finding that so long as the pre-emptor had not got mutation of names in his favour the vendee alone could realize the profits, and that the vendee was in default in allowing those profits to remain in the hands of his agent the lambardar, decreed the appeal.

From the judgment of the single Judge the defendant vendee appealed under section 10 of the Letters Patent.

Babu *Satya Chandar Mukerji*, for the appellant.

Babu *Bans Gopal*, for the respondent.

EDGE, C. J.—This was a suit to recover money, which, it was alleged by the plaintiff, the defendant ought to have received from a lambardar. The facts are simple. The plaintiff in this suit was a co-sharer in a village in which the custom of pre-emption prevailed. The village was a pure zamindari village. Another co-sharer sold a fractional share in the village to the defendant to this suit, who is the appellant in this appeal. Thereupon the present plaintiff brought a suit for pre-emption against the present defendant appellant, and on the 4th of March, 1890, obtained a decree for pre-emption conditional on his paying within one month into Court the decreed pre-emptive price and certain costs. On the 14th of March, 1890, the present plaintiff paid the decretal amount into the Court. The present defendant appealed against the decree for pre-emption. His appeal was dismissed in December,

1891, and there was no further appeal. On the 10th of May, 1892, the present plaintiff obtained mutation of names in respect of the share which he had pre-empted, and on the 12th of September, 1893, he instituted the present suit for the profits of the share between the 14th of March 1890 and the 10th of May 1892.

The profits of the pre-empted share had been received in due course by the lambardar of the village and had not been paid over either to the plaintiff or the defendant, and neither of them had brought any suit against the lambardar for profits.

The plaintiff says that the defendant was under an obligation, on the facts stated, to realize from the lambardar by suit or otherwise the share of the profits in respect of the pre-empted share, and he claims to recover that share from the defendant by this suit.

The suit was dismissed by the first Court. The plaintiff's appeal was dismissed by the Court of first appeal. He then brought an appeal to this Court from the decree of the Court of first appeal. His appeal was decided by a Judge sitting singly. The Judge decreed the appeal, holding that the defendant was the only person who could have compelled the lambardar to pay the profits. The learned Judge was also of opinion that the lambardar was in law the agent for the defendant and that the defendant was liable because he allowed the profits to remain in the pocket of his agent.

In my opinion a lambardar is for some purposes the agent of the co-sharers, but it is quite clear to me that he is not an agent of the same kind as an ordinary agent appointed to collect rents. In the case of such an ordinary agent appointed to collect rents, the person who appoints him would be liable for any wrongful acts done in the course of his employment, but that is not the position between a co-sharer and a lambardar. In my opinion it is not correct to say that rents received by a lambardar and not paid out by him in the distribution of profits are held by him under circumstances which would make a co-sharer liable for any misfeasance of the lambardar in the disposition of the rents. It is somewhat difficult to express, but what I mean is that the lambardar is not such an

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agent for the co-sharers as would make it true in law to say that the rents received by him were in the hands of the co-sharers.

On the other point, as to whether this defendant could or could not have compelled the lambardar to pay over to him the profits of this share, I express no opinion. I think it safer to reserve my consideration of that question until it actually arises and has to be determined, and I do not think it is necessary to determine it in this case, for this reason, that it appears to me immaterial whether this defendant was or was not the only person who could have compelled the lambardar to pay over to him the profits of the share. The defendant had not received any of the profits of the share. The share was not represented by lands in the possession of the defendant out of which he could have made a profit: it merely was represented by a fractional share in a zamindari village. No question of mesne profits could arise; and, in order to hold that the defendant was liable under the circumstances, it would be necessary to show that there was, either by statute law or by contract or by general principles of jurisprudence, an obligation cast upon the defendant to collect these profits from the lambardar and to hold them for the plaintiff. The statute law, so far as I am aware, imposes no such obligation. The statute law enables a plaintiff, as in this case, to avail himself to the full of the decree which he has obtained, but it does not compel a defendant to act as trustee or as an agent for the plaintiff while the plaintiff is sleeping over his rights under the decree. There is no question of any contract between the parties out of which an obligation could arise, and, upon general principles, as the only possession of the property which the defendant could have had was the receipt of the profits which the defendant did not receive, and, as I am unaware that the unsuccessful defendant in a suit is obliged to act as the agent for the successful plaintiff to collect what the plaintiff may be entitled to collect himself, I cannot see where any obligation arose.

I would allow this appeal, and, setting aside the decree of this Court, I would dismiss the appeal to this Court, with costs of this appeal and of the appeal to this Court, and restore and affirm the decree of the Court of first appeal.

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KNOX, J.—I concur in what the learned Chief Justice has just said that the defendant in this case is not liable. The plaintiff got his decree in March, 1890, which he could at once have enforced, and under which he could have taken possession. He did not do so, and he seeks to make the defendant vendee liable on the ground that the defendant was in possession and had the opportunity of realizing the profits. As a matter of fact, it has been found that the defendant received no profits at all, and I doubt whether he could in any case have recovered them from the lambardar. In any case I hold that he was not liable. I would allow this appeal, and concur in the order proposed.

BANERJI, J.—I am entirely of the same opinion as the learned Chief Justice and have nothing to add.

AIKMAN, J.—I concur with the learned Chief Justice in thinking that this appeal should be allowed. It seems to me that what led the learned Judge who decided the appeal to this Court to adopt the view which he took was the impression in his mind, as set forth in his judgment, that the defendant alone could compel the lambardar to pay to him the profits for which the plaintiff sues. If this view were correct, much could be said in support of the learned Judge's decision. But it seems to me to be a mistake to say that the defendant in this case was the only one who could compel the lambardar, in whose hands the profits were, to pay them. It is extremely doubtful whether he could have compelled the lambardar to pay. My own view is that a suit by the defendant vendee whilst the decree dispossessing him was in force would certainly have failed. But, in any case, I would hold that the plaintiff could have recovered the profits from the lambardar had he taken the proper steps. By the force of the decree which the plaintiff had obtained, and by his payment into Court of the purchase money on the 14th of March 1890, his title to the possession of the property, so far as the first Court was concerned, became from the date of payment absolute. It is true that the defendant vendee did file an appeal against the decree in the pre-emption suit, but that fact alone would not have prevented the successful plaintiff from

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obtaining possession. The suit is to recover profits for the period which elapsed between the date on which the plaintiff paid the pre-emptive price into Court and the date on which he got his name recorded in the revenue papers. It is true that, until he got his name recorded in the revenue papers, he could not have maintained a suit in a Court of Revenue for the profits, but I cannot see that there was anything to prevent him suing the lambardar in a Civil Court to recover these profits. The tenure of the vendee after the pre-emptor had paid the money into Court was, it must be admitted, of a most precarious nature, as he might any day have been ousted by the decree-holder. Under these circumstances, I fail to see that he was under any obligation to take steps to realize from the lambardar the profits of the share, which had ceased to be his; and, as I have said above, my opinion is that the lambardar might have successfully resisted any attempt by him to realize these profits. The lambardar was not an agent for Sri Kishen, the defendant, personally, but was only an agent for him whilst he was a co-sharer in the village, and, when he ceased to be such, any agency which might previously have existed came to an end. For these reasons I concur in thinking that this appeal should be decreed, and I concur in the order proposed.

BY THE COURT.—We allow this appeal, and, setting aside the decree of this Court, we dismiss the appeal to this Court, with costs of this appeal and of the appeal to this Court, and restore and affirm the decree of the Court of first appeal.

Appeal decreed.