

APPELLATE CIVIL.

1897
July 19.*Before Mr. Justice Banerji.*MURAD-UN-NISSA AND ANOTHER (PLAINTIFFS) v. GHULAM SAJJAD
(DEFENDANT).**Lambardar and co-sharer—Suit against lambardar for profits—Liability of heir of lambardar—Act No. XII of 1881 (N.-W. P. Rent Act), section 93, cl. (h).*

The liability of a lambardar to pay to a co-sharer the profits which the lambardar has failed through his gross negligence to collect is a personal liability and cannot be enforced against the lambardar's legal representative. *Gulab v. Fateh Chand* (1) referred to.

THE facts of this case sufficiently appear from the judgment of the Court.

Mr. J. Simeon, for the appellant.

Maulvi Ghulam Mujtaba, for the respondent.

BANERJI, J.—This was a suit brought by the plaintiffs appellants under clause (h) of section 93 of Act No. XII of 1881 for their recorded share of the profits for the years 1295, 1296 and 1297 Fasli against Abbas Ali Khan, the lambardar. The suit was brought in the Court of the Munsif and a decree was made by that Court for a portion of the amount claimed. On appeal to the District Judge, he, in exercise of the powers vested in him by section 208 of Act No. XII of 1881, remanded the case to the Court of the Assistant Collector. During the pendency of the suit in the Court of the Assistant Collector, Abbas Ali Khan, the lambardar, died. The plaintiffs made an application to bring on the record the present respondent Ghulam Sajjad as the son and legal representative of the deceased defendant. No order was passed by the Court upon that application, and a decree was apparently made against the deceased defendant. The amount decreed included not only a share of the profits actually

*Second Appeal No. 783 of 1896, from a decree of A. M. Markham, Esq., District Judge of Meerut, dated the 29th July 1896, modifying a decree of H. Dupernex, Esq., Assistant Collector of Bulandshahr, dated the 8th January 1896.

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collected by the lambardar, but also an amount which he could have collected but for his gross negligence. Ghulam Sajjad, accepting the decree as a decree by which he was affected, appealed against it.

The learned Judge of the lower appellate Court, following the ruling of this Court in *Gulab v. Fateh Chand* (1), held that the liability of a lambardar to pay to a co-sharer the profits which the lambardar did not collect through gross negligence was a personal liability and could not be enforced against his legal representative. The learned Judge therefore varied the decree of the Court of first instance by making a decree for a share of the profits actually realized by the lambardar. In my opinion this decision of the lower appellate Court is right with reference to the ruling on which that Court has relied. I can see no distinction in principle between the case of the representative of a lambardar who died before the institution of the suit and that of the representative of a lambardar who died after the institution of the suit; in both cases the decree which has to be made is a decree against the legal representative to the extent of the assets of the deceased which have come into his hands. If the legal representative is not liable in the one case he is not liable in the other. This appeal is almost on all fours with Second Appeal No. 283 of 1895 decided by my brother Aikman on the 17th of May 1897.*

* The judgment in this case (*Bir Narain and another v. Girdhar Lal*), was as follows:—

AIKMAN J.—The plaintiffs, who are appellants here, brought a suit under cl. (b) of section 93 of the Rent Act to recover from the defendant, Girdhar Lal, who was lambardar of the village, their share of profits for the years 1298, 1299 and 1300 Fasi. The Court of first instance found that the defendant was liable not only for the profits actually collected, but also for profits calculated on the recorded rent-roll, on the ground that it was due to his gross negligence that a balance remained unrealized. The defendant lambardar appealed against the decree of the Assistant Collector, and the learned District Judge in appeal held, on the basis of a previous decision in a case between the parties, that there was no such gross carelessness on the part of the lambardar as would entitle the plaintiff to a decree for a share of profits calculated on

In my opinion the appeal is untenable and must be, and it hereby is, dismissed with costs.

Appeal dismissed.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Blair.

HARDEO SINGH AND OTHERS (DEFENDANTS) v. NARPAT SINGH AND OTHERS (PLAINTIFFS).*

Partition—Act No. XIX of 1873, sections 111, 113, 241—Objection to partition—Jurisdiction—Civil and Revenue Courts.

The procedure provided by section 113 of Act No. XIX of 1873 does not become obligatory on a Collector or an Assistant Collector in partition proceedings unless an objection to the partition has been made by a co-sharer in possession, and unless such objection was made before the day specified in the notice which the Collector or Assistant Collector is bound to issue under section 111, and not even then unless such objection raises a question of title. Unless, therefore, such objection has been made, a Civil Court is not empowered to exercise any jurisdiction in the matter of the distribution of the land or the allotment of the mahal by partition.

THE facts of this case sufficiently appear from the judgment of the Court.

* First Appeal No. 13 of 1897, from an order of Maulvi Muhammad Anwar Husain Khan, Subordinate Judge of Farrukhabad, dated the 28th January 1897.

the recorded rental, and not on the collections. The plaintiffs come here in Second Appeal. Since the appeal was instituted in this Court the defendant lambardár has died, and his minor sons have been brought upon the record as his representatives. In my opinion the death of the original defendant renders it unnecessary for me to decide whether or not the lower appellate Court was wrong in relying upon the decision in the previous case. It was held by this Court in *Gulab v. Fateh Chand* (1) that the liability of a lambardár to account for profits unrealized owing to his gross negligence or misconduct, is a personal liability which cannot be enforced in a suit against his heir. It is true in the case referred to the suit was brought in the first instance against the heir, whereas in the present case the suit was instituted against the lambardár personally. But as the plaintiff's claim is based on the alleged negligence of the deceased, and as it is not shown that in consequence of that negligence any assets came to the hands of his heirs, the claim cannot in my opinion be pursued against them. For this reason the appeal must fail. I dismiss it with costs.

(1) *Weekly Notes*, 1886, p. 32.

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