

“If the tenants of a higher class sell their houses they should deduct therefrom the *haq-i-chaharum* (one-fourth) due.” That may either mean that the vendor is to leave with the purchaser the one-fourth due to the zamindar, or it may mean that out of the purchase-money received by him he is himself to make over one-fourth to the zamindar. As to the obligation on the purchaser, as distinguished from the vendor, the passage is inconclusive. With regard to the rest of the evidence the learned Judge expressly says, “it shows that there is no fixed rule.” By this we can only understand the learned Judge to mean that the *haq-i-chaharum* is sometimes paid by the vendor and sometimes by the vendee. In other words, it is a case where the vendee does not show that the zamindar’s customary right is limited to a right against the vendor only. The result is that we must allow the appeal, set aside the decree of the lower appellate Court, and restore the decree of the Court of first instance with costs in all Courts.

*Appeal decreed.*

1901

DHANDAI  
BIBI  
v.  
ABDUL  
RAHMAN.

*Before Mr. Justice Knox and Mr. Justice Burkitt.*

JANKI AND ANOTHER (DEFENDANTS) v. SHEOADHAR (PLAINTIFF).\*

*Landholder and tenant—Trees—Property in trees planted by a tenant on his holding.*

1901  
February 6.

When a tenant, either occupancy or tenant-at-will, plants trees on his holding, the property in those trees, in the absence of custom or contract to the contrary, attaches to the land, and the tenant has no power of selling or otherwise transferring those trees. *Ajudhia Nath v. Sital* (1), *Imdad Khatun v. Bhagirath* (2) and *Kausalia v. Gulab Kunwar* (3) referred to.

THE facts of this case were as follows. One Ram Bakhsh, an occupancy tenant, planted certain trees on his occupancy holding. He mortgaged those trees in 1835 to Sheo Ratan. Subsequently to the mortgage Ram Bakhsh relinquished his tenancy, and the holding was taken possession of by the zamindars. Then under a decree on Ram Bakhsh’s mortgage the trees were put up to auction and purchased by Sheoadhar. After this the land upon which

\* Second appeal No. 15 of 1899 from a decree of Babu Nilmadhab Rai, Judge of Small Cause Court, with powers of the Subordinate Judge of Cawnpore, dated the 28th September 1898, reversing a decree of Pandit Kanhia Lal, Munsif of Cawnpore, dated the 18th July 1898.

(1) (1831) I. L. R., 3 All., 537.

(2) (1883) I. L. R., 10 All., 159.

(3) (1899) I. L. R., 21 All., 297.

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the trees stood was taken up for public purposes, and a sum of Rs. 76-8-0 was paid as compensation in respect of the trees. This sum was realized by the zamindars, and thereupon the auction-purchaser Sheodhar sued the zamindars for the recovery of the said sum. The Court of first instance (Munsif of Cawnpore) dismissed the suit. The plaintiff appealed, and the lower appellate Court (Small Cause Court with powers of a Subordinate Judge) decreed the appeal and the plaintiff's suit. The defendants accordingly appealed to the High Court.

Pandit *Moti Lal Nehru* (for whom Pandit *Mohan Lal Nehru*), for the appellants.

The Hon'ble Mr. *Conlan* (for whom Mr. *W. Wallach*), for the respondent.

KNOX and BURKITT, JJ.—The decision of the lower appellate Court is clearly wrong, and shows a remarkable ignorance of the common law applicable to cases of this kind in these Provinces. When a tenant, either occupancy or tenant-at-will, plants trees on his holding, the property in those trees, in the absence of custom or contract to the contrary, attaches to the land, and the tenant has no power of selling or otherwise transferring those trees. This is the law which has been laid down in *Ajudhia Nath v. Sital* (1), *Imdad Khatun v. Bhagirath* (2) and *Kausalia v. Gulab Kunwar* (3). In this case when the respondent Sheodhar took a mortgage of the trees and in execution of the decree on that mortgage purchased those trees, he acquired in them no interest either by his mortgage or by the sale resulting from it. There is nothing to show that the zamindars, who were not made parties to his suit or any of the proceedings, were in any way cognizant of them. The appeal is decreed, the judgment and decree of the lower appellate Court set aside, and that of the Court of first instance restored with costs.

The plaintiff's suit will stand dismissed with costs in all Courts.

*Appeal decreed.*

(1) (1881) I. L. R., 3 All., 567.

(2) (1888) I. L. R., 10 All., 159.

(3) (1899) I. L. R., 21 All., 297.