

Before Mr. Justice Burkitt and Mr. Justice Champier.

MEGH SINGH (DEFENDANT) v. TIKA RAM (PLAINTIFF).*

1901
August 14.

Act No. XII of 1881 (North-Western Provinces Rent Act), section 56—Landholder and tenant—Distraint—Hypothecation for rent of produce of land.

Held, on a construction of section 56 of Act No. XII of 1881, that when the rent of a tenant is in arrears the landlord is entitled to distraint any crop growing on the tenant's holding, no matter by whom that crop was sown. *Geetum Singh v. Buldeo Khar* (1), and *Fatima Begam v. Hansi* (2) referred to.

THE facts of this case were as follows:—Megh Singh levied a distress against Sewa Ram, Musammat Kishori and Chote Singh. Tika Ram contested it on the ground that the crops distrained were his, and could not be distrained for an arrear due from Sewa Ram and others. The Court of first instance (Assistant Collector) held that the distress was valid, and dismissed the claim, finding that the plaintiff was in the position, as regards the defendant, of a sub-tenant. The plaintiff appealed. The lower appellate Court (Additional District Judge of Agra) holding that even if the plaintiff was a sub-tenant, that would not entitle the defendant to distraint his crops, and that there had been no finding as to the ownership of the crops, remanded the suit for trial under section 562 of the Code of Civil Procedure. Against this order of remand the defendant appealed to the High Court.

Pandit *Sundar Lal* and *Munshi Gokul Prasad*, for the appellants.

Mr. *Abdul Majid*, for the respondent.

BURKITT, J.—In my opinion the decision of the Officiating District Judge in this case is wrong. When the rent of a tenant (in this case an occupancy tenant) is in arrear, the landlord is, I think, entitled to distraint any crop growing on the tenant's holding, no matter by whom that crop was sown. This seems to me to be the clear meaning of the words "the produce of all lands in the occupation of a cultivator shall be deemed to be hypothecated for the rent payable in respect of such land." In my opinion it makes no matter whether such crop was sown, as in this

* First Appeal No. 190 of 1900 from an order of Lala Baijnath, B.A., Rai Bahadur, Additional Judge of Agra, dated the 22nd September 1900.

(1) (1872) 4 N.-W. P., H. C., Rep., 75. (2) (1887) I. L. R., 9 All., 244.

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case, by the sub-tenant of an occupancy tenant or by the occupancy tenant himself. This is the view that was taken by this Court in the case of *Geetum Singh v. Buldeo Kachar* (1) and in the observations of the late Chief Justice in the case of *Fatima Begum v. Hansi* (2). A similar rule has been adopted by the Board of Revenue. It may be that the wording of section 56 is open to some possible argument, but I am of opinion that that question is now covered by authority. I would allow this appeal, and, setting aside the order of the lower appellate Court, restore the decree of the Court of first instance with costs in all three Courts.

CHAMIER, J.—I concur on the ground that the question has been settled by the authorities to which my learned colleague has referred.

BY THE COURT.—The order of the Court is that the appeal be allowed, that the remand order of the lower appellate Court is set aside, and the decree of the Court of first instance restored, with costs in all Courts.

Appeal decreed.

1901
 August 15.

Before Mr. Justice Burkill and Mr. Justice Chamier.

KALIAN RAI (PLAINTIFF) v. RAM CHANDAR (DEFENDANT).*—
Hindu Law—Mitakshara—Succession—Question of priority between the son of the paternal uncle of the deceased and his brother's grandson.

Held that according to the Hindu law of the Mitakshara school the grandson of a brother is a nearer sapinda than the son of a paternal uncle. *Sambhoo Dutt Singh v. Jhooloo Singh* (3), *Rutchepully Dutt Iha v. Rajinder Narain Rao* (4), *Kureem Chand Gurain v. Oodung Gurain* (5), *Oorhya Kooer v. Rajoo Nye* (6), *Bhyah Ram Singh v. Bhyah Ugur Singh* (7) and *Suba Singh v. Sarfaraz Kunwar* (8) referred to. *Suraya Bhukta v. Lakshminarasomma* (9) dissented from.

THIS appeal arose out of a suit in which the plaintiff, Kalian Rai, laid claim to the estate of one Rai Singh, the son of the

* Second Appeal No. 267 of 1899, from a decree of Babu Prag Das, Subordinate Judge of Saharanpur, dated the 6th January, 1899, reversing a decree of Pandit Kunwar Bahadur, Munsif of Muzaffarnagar, dated the 7th February, 1898.

(1) (1872) 4 N.-W. P., H. C. Rep, 76. (5) (1866) 6 W. R., C. R., 158.
 (2) (1887) I. L. R., 9 All., 244; at p. 247. (6) (1870) 14 W. R., C. R., 208.
 (3) S. D. A., L. P., 1855, p. 382. (7) (1870) 13 Moo. I. A., 373.
 (4) (1839) 2 Moo., I. A., 133. (8) (1896) I. L. R., 19 All., 215.
 (9) (1881) I. L. R., 5 Mad., 201.