

the lower Appellate Court. The learned vakil for the respondents relies on the case of *Musammatt Ojheconissa Begam v. Shaikh Rustam Ali* (1). The Judges there, no doubt, make the following observations:—"Acts done by an agent are recognised in law as the acts of the principal, and we see no reason why the same maxim should not apply in a case of pre-emption to those ceremonies which in their nature are capable of being performed by an agent. What he (the pre-emptor) could not do by agent, *viz.* declare his determination to become the purchaser as soon as the news of the sale reached him, he did in person." It is clear therefore that the remark relied on was *obiter*.

I do not deny that a good deal might be said in favour of the view expressed by the lower Appellate Court; but the authorities of this Court cited above are binding on me. Following those authorities, I am bound to hold that the decision of the lower Court on the question cannot be sustained. I allow the appeal, and setting aside the decree of the lower Appellate Court, I remand the case to that Court under the provisions of section 562 of the Code of Civil Procedure with directions to readmit this appeal under its original number in the register and dispose of the remaining pleas raised in appeal to it. The appellant will have his costs in this appeal in any event. Other costs will abide the result.

*Appeal decreed and cause remanded.*

*Before Mr. Justice Aikman.*

GENDA KUNWAR (DEFENDANT) v. PIARI LAL (PLAINTIFF).  
*Act (Local) No. III of 1901 (United Provinces Land Revenue Act), section 234—Lambardar and co-sharer—Remuneration of lambardar—Rules of the Board of Revenue dated 24th February, 1902, Nos. 22 and 23.*

*Held that, in the absence of any agreement between the lambardar and co-sharers as to the lambardar's remuneration, the lambardar is entitled to 5 per cent. under Rule 23 of the Board of Revenue Rules, dated February 24th, 1902, and is entitled to the benefit of this rule, although in previous years he may have received nothing.*

\* Second Appeal No. 983 of 1903, from a decree of Kunwar Bharat Singh, District Judge of Banda, dated the 19th of July, 1904, modifying a decree of Munshi Durga Prasad, Assistant Collector of Banda, dated the 8th of January, 1904.

(1) W. B., 1864, p. 219.

1906

MUNNA  
KIAN  
v.  
CHHEDA  
SINGH.

1906  
May 23.

1906

GENDA  
KUNWAR  
v.  
PIANI LAL.

THE plaintiff mortgagee in possession of a two-anna share, sued the defendant, who was lambardar, for profits. The account of the total rental filed by the plaintiff contained an item of Rs. 217-10-10 on account of the *khudkasht* land of a co-sharer named Dasrath.

The defendant, amongst other claims, pleaded that he was entitled to deduct from the divisible profits the uncollected rent of Dasrath. Both the first Court (Assistant Collector of Banda) and the lower appellate Court (District Judge of Banda) rejected this plea, the latter holding—"There is no reason why Dasrath, one of the two chief *sir*-holders in the village, should be allowed to retain the *sir* lands without inclusion of its rent in the total divisible income of the village. That in fact is the only way of arriving at the proportion of actual profits payable to the co-sharers. The allegation that the rent has not been realized is not enough. The appellant should have realized it, and if he did not do so it could only be under an idea that to sue Dasrath for it would be merely to court the institution of a suit by him for profits, which would perhaps not pay the appellant."

The defendant further pleaded that he was entitled to lambardari dues in addition to the out-of-pocket expenses allowed. Both Courts also rejected this plea. Hence this appeal.

Babu *Durga Charan Banerji*, for the appellant.

The Hon'ble Pandit *Madan Mohan Malaviya*, for the respondent.

AIKMAN, J.—This appeal arises out of a suit for profits brought by the plaintiff respondent. Two pleas are raised in the memorandum of appeal. One is that under a circular of the Board of Revenue the appellant, who is a lambardar, is entitled to receive as remuneration from the plaintiff respondent 5 per centum on the land revenue of the plaintiff's share, and that the Courts below have improperly disallowed his claim to this percentage. Section 234 of the North-Western Provinces Land Revenue Act, 1901, confers on the Board of Revenue the power, from time to time and subject to the sanction of the Local Government, to make rules consistent with the Act regulating, amongst other things, the appointment, duties and dismissal of lambardars,

the payment of revenue through lambardars and their remuneration [*vide* clauses (f) and (p) of the section]. Under the power thus conferred the Board of Revenue framed rules which received the sanction of the Government on the 24th of February, 1902. Some of the rules deal with the remuneration of lambardars. Rule 22 provides that where the amount which a lambardar by virtue of his appointment is entitled to receive from the co-sharers whom he represents has been fixed by agreement, such amount shall continue to be payable to him. The material portion of rule 23, on which reliance is placed by the appellant's learned vakil, is as follows:—"Where no amount is so payable, the lambardar will be entitled to receive from the co-sharer whom he represents 5 per cent. on the land revenue payable by them in respect of their shares, or such less amount as may be agreed upon between him and them." The Court below refused to allow the percentage claimed by the appellant. The District Judge in his order, dated the 6th of April 1904, observes:—"On the face of the fact that collection expenses have been allowed, lambardari fees in addition would be inequitable taxation on the respondent, and there being no proof of any custom to that effect, nay, it being admitted that such a fee was never before allowed, the claim is, in my opinion, untenable." If the lambardar is allowed nothing but his out-of-pocket expenses the result would be that he would get no remuneration whatever for his trouble. The fact that the lambardar has received nothing in previous years would not in my opinion disentitle him to take advantage of the new rule made by the Board. In my judgment the case falls within the purview of rule 23. In the absence of proof of any agreement between lambardar and co-sharers that the lambardar is to receive a less amount, he is in my opinion entitled to the 5 per cent. fixed by the rule.

The second plea is as to the inclusion by the Court below in making up accounts of the rent of *sir* and *khudkash* lands of a co-sharer named Dasrath. In regard to this plea I agree with what is said by the learned Judge in his order of the 6th April, 1904 (*vide* his remarks as to point 6). The amount of remuneration to which the lambardar is entitled under the Board's Rule referred to above is Rs. 9-2-0. To this extent the appeal is

1906

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 GENDA  
 KUNWAR  
 v.  
 PTARI LAL.

1906

GENDA  
KUNWAR  
v.  
PIARI LAL.

allowed. *Quoad ultra* it is dismissed. The parties will pay and receive costs here and in the Courts below in proportion to their failure and success.

*Decree modified.*

1906

May 28.

*Before Mr. Justice Richards.*

MADAN LAL (DEFENDANT) v. MUHAMMAD ALI NASIR KHAN  
(PLAINTIFF).\*

*Act II of 1901 (Local), Agra Tenancy Act, section 20—Statute 24 and 25 Vict., Cap. CLIV—Occupancy holding—Sale in execution of Civil Court Decree—Subsequent relinquishment of holding by tenant in favour of landlord.*

A wife in execution of a decree for maintenance got the occupancy holding of her husband sold, purchased it herself, and afterwards sold it to the defendant. Subsequently the husband relinquished the holding to the plaintiff, his landlord.

*Held* that the fact that the relinquishment by the husband may have been intended to defeat the defendant's claim did not prevent the defendant's claim being absolutely barred by the provisions of section 20 of the (Agra Tenancy Act), 1901. *Jagoe v. Harrington* (1), *Donoughmore v. Forest* (2), *Gilman v. Murphy*, (3) referred to.

THE facts appear sufficiently from the judgment of the Court. The appeal was heard under the provisions of section 551 of the Code of Civil Procedure.

RICHARDS, J.—This is a suit to recover possession of a grove. The lower Court decreed the plaintiff's claim. The plot formed part of the occupancy holding of one Surju. Surju's wife obtained a decree against Surju for maintenance. In execution of this decree she sold and purchased herself the plot now in dispute. She got formal possession on 7th February, 1903, and on 31st March, 1903, she sold to the defendant, Madan Lal. Surju then relinquished his holding to the plaintiff his landlord. Madan Lal now defends his suit upon the strength of the sale-deed made in his favour by Musammam Mahadei, the wife of Surju.

I am quite satisfied that the property in dispute was part of the occupancy holding of Surju. Section 20 of Act II of 1901

Second Appeal No. 119 of 1906, from a decree of W. Tndball, Esq., District Judge of Gorakhpur, dated the 16th of November, 1905.

(1) 10 L. R., Ireland, 335, (2) Ir. Rep., 5 Com. L., 443 (Exch. C.).

(3) Ir. Rep., 6 Com. L., 34.