

1905  
July 15.

*Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice  
Sir William Burkitt.*

SUMERA AND ANOTHER (DEFENDANTS) v. PIARE LAL (PLAINTIFF).\*

*Act (Local) No. II of 1901 (Agra Tenancy Act), sections 83 et. seq.—  
Land-holder and tenant—Surrender by tenant of his holding—Notice.*

Before a valid notice of surrender of his holding can be served on a land-holder through the Tahsildar under the provisions of section 85 of the Agra Tenancy Act, 1901, it is a condition precedent that the tenant should have himself given notice under section 83 or section 84 and that the land-holder should have refused to receive such notice.

THE plaintiff in this case sued to recover, from the defendants, who were his tenants, three years' arrears of rent. The Court of first instance (Assistant Collector of Farrukhabad) decreed the plaintiff's claim in respect of the first two years; but in respect of the third year it held that the tenancy had been duly determined within the meaning of section 83, and the following sections of the Agra Tenancy Act, 1901. On appeal the lower appellate Court (District Judge of Farrukhabad) held that the defendants were liable to pay the three years' arrears of rent claimed, on the ground that the defendants had not given to the land-holder, before the 1st of April, a notice in writing of their intention to surrender the holding. Against this decree the defendants appealed to the High Court.

Munshi *Gulzari Lal*, for appellants.

Munshi *Gobind Prasad*, for the respondent.

STANLEY, C. J., and BURKITT, J.—The question raised in this appeal depends upon the true construction of some sections of the Agra Tenancy Act of 1901. The plaintiff's claim was to recover from the defendants, who are his tenants, three years' arrears of rent. The Court of first instance decreed the plaintiff's claim in respect of the first two years; but in respect of the last year held that the tenancy had been duly determined within the meaning of section 83 and the following sections of the Act to which we have referred. On appeal the lower appellate Court held that the defendants were liable to pay the three years' arrears of rent claimed, on the ground that the defendants had not given the land-holder, before the 1st of

\* Second Appeal No. 1133 of 1903 from a decree of W. F. Kirton, Esq., District Judge of Farrukhabad, dated the 10th of September 1903, modifying a decree of Babu Sitla Baksh, Assistant Collector, 1st class, of Farrukhabad, dated the 18th of July 1903.

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April, a notice in writing of their intention to surrender the holding. Section 83 (1) enables a tenant, not bound by a lease or other agreement for a fixed period at the end of any agricultural year to surrender his holding; but sub-section (2) provides that, notwithstanding such surrender, unless the tenant before the 1st day of April gives to the land-holder notice in writing of his intention to surrender, he shall be liable to the land-holder for the rent of the holding for the agricultural year next following the date of the surrender. Admittedly no notice was in this case given, but the appellants rely upon the provisions of section 85 of the Act. That section declares that "if the land-holder refuses to receive any notice under section 83 or 84, the tenant may, before the expiry of the period limited for giving such notice, make an application to the Tahsildar, who shall thereupon cause the notice to be served on such land-holder, the tenant paying the costs of such service." The appellants rely upon the fact that on the 26th of March, that is, six days before the 1st of April, they applied to the Tahsildar under section 85 to have a notice of surrender served upon the respondent, and that the Tahsildar had served the notice accordingly. In making this application the appellants did not state that they had already tendered to the land-holder a notice of their intention to surrender their holding and that he had refused to receive that notice. The land-holder did not in fact refuse to receive any notice. This being so, it appears to us that the notice given by the Tahsildar was not a good notice within the meaning of the section. A tenant can only effect service upon his land-holder under section 85 in a case in which the tenant has already tendered to his land-holder a notice in writing of his intention to surrender and the land-holder has refused to receive the notice. The Act provides two ways in which a notice of intention to surrender may be served, one by the tenant, before the 1st day of April, giving the land-holder such notice in writing, and the other, on the refusal of the land-holder to receive the notice from the tenant when tendered, the latter may then apply to the Tahsildar for service of the notice upon the land-holder, and effect service through him. There is no authority given to the Tahsildar to effect service

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upon a land-holder who has not already refused to receive the notice tendered under section 83. It was contended on behalf of the appellants that section 86 applied, and that inasmuch as no suit had been brought by the landlord to have the notice declared invalid, the landlord should be deemed to have accepted the surrender. This is not the proper construction of the opening words of section 86. That section refers to a notice such as is contemplated by section 83 or section 85, that is, either a notice given to the land-holder before the 1st day of April, which he has accepted, or to a case under section 85 where the land-holder has refused to accept the notice tendered under section 83 and the notice has been served by the Tahsildar. The expression "such notice" refers to the notice contemplated by either section 83 or section 85.

For these reasons we dismiss this appeal with costs.

*Appeal dismissed.*

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July 18.

*Before Mr. Justice Banerji and Mr. Justice Richards.*

ALI HUSAIN KHAN (DEFENDANT) v. TASADDUQ HUSAIN KHAN AND  
ANOTHER (PLAINTIFFS).\*

*Pre-emption—Wajib-ul-arz—Co-sharer—Owner of isolated plots of land  
in a village.*

Held that the owner of isolated plots of land in a village is a co-sharer in the villages and may as such possess rights of pre-emption, although he does not own a share in the zamindari of the village and his name is not recorded in the khewat. *Safdar Ali v. Dost Muhammad* (1) and *Dakhni Din v. Rahim-un-nissa* (2) followed.

THIS was a suit for pre-emption based upon the village wajib-ul-arz, which conferred a right of pre-emption upon amongst others, co-sharers in the village. The plaintiffs claimed as co-sharers. The defendant-vendee pleaded that he was the owner of certain plots of land in the village, and as such a co-sharer within the meaning of the wajib-ul-arz, and the plaintiffs, therefore, had no priority over him. The Court of first instance (Subordinate Judge of Cawnpore) found that the

\* First Appeal No. 39 of 1905, from an order of J. Douman, Esq., District Judge, of Cawnpore, dated the 31st day of January 1905, reversing the decree of Babu Bipin Bihari Mukerji, Subordinate Judge, of Cawnpore, dated the 5th day of August 1904.

(1) (1889) I. L. R., 12 All., 426.

(2) (1894) I. L. R., 16 All., 412.