Before Mr. Justice Sir George Knox.

1907
April 23.

MUHAMMAD KAZIM (PLAINTIFF) *v.* MIAN KHAN AND ANOTHER (DEFENDANTS).*

Lambardar and co-sharer—Powers of lambardar to deal with co-parcenary lands—Lease for seven years.

In the case of a lease of co-parcenary land granted by a lambardar, where there is any suspicion established that the lambardar has granted a long lease to the detriment of co-sharers, a heavy burden would be placed on the lessee to show that by custom or for some other cause the lambardar is authorized in granting the lease. On the other hand where the granting of the lease is shown to be for the benefit of the co-sharers and when the co-sharers presumably have been shown to have derived benefit under the lease the lease should not be set aside. *Jagan Nath* v. *Hardayal* (1), *Bansidhar* v. *Dip Singh* (2), *Mukta Prasad* v. *Kamta Singh* (3) and *Chattray* v. *Nawala* (4) referred to.

THIS was a suit brought by one of the co-sharers in a village to have set aside a lease of co-parcenary lands granted by a lambardar. The lease was for seven years and had been granted on the 24th July 1901. Before the present suit was brought the lambardar who had granted the lease had ceased to hold office. The plaintiff alleged that the lease had been given out of sheer dishonesty and in order to cause loss to pattidars, and was one of several leases which had been given by the same lambardar. In defence fraud was denied. It was pleaded that the lease was lawfully executed for consideration, and that before the execution of the lease the lessee had cultivated the land on rent at 8 annas a bigha. The annual rent set out in the lease was Rs. 3 a bigha. The Court of first instance (officiating Munsif of Koil) decreed the claim. In appeal the District Judge, after finding that no fraud had been proved, went on to say that while the rent was lower than the rent paid for the neighbouring fields, still the land contained salt and was liable to inundation and produced only one crop a year. The appeal was decreed and the plaintiff's suit dismissed.

The plaintiff appealed to the High Court.

Dr. *Satish Chandra Banerji*, for the appellant.

Munshi *Gulzari Lal*, for the respondents.

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* Second Appeal No. 656 of 1905, from a decree of F. E. Taylor, Esq., District Judge of Aligarh, dated the 2nd of June 1905, reversing a decree of Babu Jogendro Nath Chaudhri, officiating Munsif of Koil, dated the 19th of December 1904.

(1) Weekly Notes, 1897, p. 207.
(2) (1897) I. L. R., 20 All., 438.
(3) Weekly Notes, 1906, p. 277.
(4) (1906) I. L. R., 29 All., 20.

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KNOX, J.—The facts out of which this second appeal arises are as follows:—The defendant first party had been granted a lease for seven years by the defendant second party over certain land, the subject matter of the present appeal. The lease was granted on the 24th July 1901. The defendant second party ceased to hold the position of lambardar before the present suit was brought and his successor, the plaintiff, here the appellant, brought the suit out of which this appeal has arisen to have the lease cancelled. He alleged that the lease had been given out of sheer dishonesty and in order to cause loss to *pattidars*, and is one of several leases, which had been given by the late lambardar. In defence fraud was denied. It was pleaded that the lease was lawfully executed for consideration, and that before the execution of the lease the lessee had cultivated the land on payment of rent at 8 annas a bigha. The lease set out the annual rental of the land to be Rs. 3 a bigha. The Court of first instance decreed the claim. In appeal the learned District Judge, after finding that no fraud had been proved, went on to say that while the rent was lower than the rent paid for the neighbouring fields, still the land is under the disadvantge of containing salt and is liable to inundation and able to produce only one crop in a year. It accordingly held that the plaintiff had failed to make out his case. The appeal was decreed and the suit of the plaintiff dismissed with costs.

In appeal here it was contended that the lambardar was not competent to grant a lease beyond the requirements of a particular year or season. In support of this reliance was placed on a ruling of this Court in *Jagan Nath* v. *Hardayal* (1) and also the cases of *Bansidhar* v. *Dip Singh* (2), *Mukta Prasad* v. *Kamta Singh* (3) and *Chattray* v. *Nawala* (4).

The first of these cases was one in which the lambardar had granted a perpetual lease of the common land of the village and within a few months of the granting of the lease one of the co-sharers came in and sought to have it set aside. It was held that the lambardar was not authorized to grant a perpetual lease, and the learned Judges went on to say, page 208:—"So far as we are aware a lambardar has no general power to grant any lease of

(1) Weekly Notes, 1897, p. 207.
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co-parcenary land beyond such as the circumstances of the particular year or particular season may require."

In *Bansidhar* v. *Dip Singh* the lease was for ten years, and it was set aside, the learned Judge who decided the case holding that the lambardar has no general power of granting any lease of co-parcenary land beyond such as the circumstances of the particular year or particular season may require. The case, however, was a peculiar one and the lease was one given by a disappointed litigant, whose power as lambardar was soon about to cease, with the intention of damnifying his successful opponent in the partition proceedings.

In *Chattray* v. *Nawala*, to which I was a party, it was held that a lambardar should have power to make temporary lettings, but the duties imposed upon him do not seem to admit of his executing in favour of a lessee without the consent of the co-parcenary body a lease for a long term of years.

In one of the four cases mentioned it was held that a lambardar was competent to execute a lease for ten years without reference to other co-sharers, where the land would not otherwise be let and where it would be for the benefit of the co-sharers that the land be so let. I see that a similar view was taken by two other learned Judges in an unreported case, *Roshan Lal* v. *Muhammad Fazl Husain*, S. A. No. 123 of 1898, decided on the 14th of June 1900. The facts of this last mentioned case are more in harmony with the facts of the case before me. I also notice that the lease before me was granted in July 1901, and the present suit was not instituted till 1904: the plaintiff, who was co-sharer during these three years, must have received profits arising out of this very lease. For these reasons I do not think it will be equitable to allow him now to set aside this lease in the settlement of which no fraud took place, and apparently fair adequate consideration was given, merely on the ground that a lambardar has no authority to grant leases for long periods without the consent of co-sharers. It seems to me that every case of this kind must depend upon the facts and circumstances out of which the lease has sprung. Where there is any suspicion established that the lambardar has granted a long lease to the detriment of co-sharers, a heavy burden would be placed on the

lessee to show that by custom or for some other cause the lambardar is authorized in granting the lease. On the other hand, where the granting of the lease is shown to be for the benefit of the co-sharers and when the co-sharers presumably have been shown to have derived benefit under the lease, I do not think that the lease should be set aside. For these reasons I dismiss the appeal with costs.

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Appeal dismissed.

Before Mr. Justice Richards.

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ACHHAIBAR DUBE (PLAINTIFF) *v.* TAPASI DUBE AND OTHERS (DEFENDANTS).*

Civil Procedure Code, section 317—Joint decree—Purchase at sale in execution by one decree-holder—Suit for declaration that property purchased was joint.

In execution of a joint decree on a mortgage one of the decree-holders obtained leave to bid at the auction sale and purchased the mortgaged property for the exact amount of the decree, namely, the mortgage debt, interest and costs. Satisfaction of the decree was entered up and the purchaser took possession of the property. *Held* that section 317 of the Code of Civil Procedure did not preclude the other joint decree-holder from suing for a declaration that the property so purchased was the joint property of himself and the actual purchaser. *Bodh Singh Doodhooria* v. *Ganesh Chunder Sen* (1) referred to.

THE plaintiff in this case sued for a declaration that certain property which had been purchased at auction sale by the defendant Tapasi Dube, was the joint property of himself and the plaintiff. It appears that Tapasi Dube and Janki Dube, who were alleged to be members of a joint Hindu family, obtained a joint decree for sale of certain mortgaged property. When the property was sold, however, Tapasi Dube obtained leave to bid at the sale and purchased the property in suit for Rs. 950. This being the exact amount of the decree, including interest and costs, no money actually passed, but the purchaser was put in possession and the decree recorded as satisfied. In certain partition proceedings between the parties in the Revenue Courts, the defendants attempted to exclude this

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* Second Appeal No. 638 of 1905, from a decree of Munshi Achal Behari, Subordinate Judge of Gorakhpur, dated the 15th of April 1905, reversing a decree of Babu Lalgopal Mukerji, Munsif of Gorakhpur, dated the 16th of January 1905.

(1) (1873) 12 B. L. R., 317.