supported by the ruling in *Kudrathi Begum* v. *Najib-un-nessa* (1).

The second point urged was that, inasmuch as the deed was not executed by Musammat Sundar, it was necessary not only to ascertain whether or not she had given the mukhtarnama to Makhan Lal, but also to ascertain whether or not she as a parda-nashin lady had understood the contents of the mukhtarnama and had the same explained to her before she executed it. Neither in the Court of first instance nor in the grounds of appeal has any point been taken as to the evidence by which the execution of the mukhtarnama was proved. The mukhtarnama was duly registered and a certificate of its registration was given in evidence, but it was not proved that the mukhtarnama was fully explained and understood by Musammat Sundar. In our judgment this was not a matter which the Registrar or the Civil Court in a suit brought under the provisions of section 77 of the Registration Act should take into consideration. The Registrar and the Court in such a suit ought to concern themselves with the genuineness of the deed and not its validity. This view is supported by the decision of the Calcutta High Court in the case of *Raj Lakhi Ghose* v. *Debendra Chundra Mojumdar* (2). Accordingly the second ground of appeal also fails and we dismiss the appeal with costs.

*Appeal dismissed.*

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

KAMTA SINGH (PLAINTIFF) *v.* MUKHTA PRASAD AND ANOTHER (DEFENDANTS).*

*Lambardar and co-sharer—Suit for profits—Nature of liability of two lambardars for the same village—Res judicata.*

Where there are two lambardars for the same village, they may, as a matter of convenience, elect to divide the village between them for purposes of collection; but such division will be purely a matter of convenience and will not affect the joint liability of the lambardars to the co-sharers.

A co-sharer sued the two lambardars jointly for profits, and the Court (an Assistant Collector) held that they were not liable to be sued jointly and

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*Appeal No. 75 of 1906 under section 10 of the Letters Patent.

(1) (1897) I. L. R., 25 Calc., 93. (2) (1897) I. L. R., 24 Calc., 668.

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dismissed the suit. The plaintiff did not appeal, but filed separate suits. *Held* that this decision did not amount to a *res judicata* as to the lambardars' joint or separate liability in a subsequent suit by the same co-sharer against them for profits of other years.

THIS appeal arose out of a suit brought by a co-sharer against two lambardars jointly for profits of his share in the village. The defence was that, inasmuch as the two lambardars collected separately each for his own 10 biswas of the village, a joint suit was not maintainable, and further that this question was *res judicata*. The plea of *res judicata* was based on the following facts. On a former occasion the plaintiff had brought a similar suit for profits against the same two lambardars jointly. In that suit it had been decided by an Assistant Collector that a suit against the lambardars jointly was not maintainable; and the plaintiff, instead of appealing against it, had acquiesced in this decision and filed separate suits. The Court of first instance (an Assistant Collector) dismissed the suit upon the ground of *res judicata* and this decision was affirmed by the Officiating District Judge in appeal. The plaintiff then appealed to the High Court, and his appeal coming before a single Judge of the Court was dismissed upon the same ground. The plaintiff thereupon filed this present appeal under section 10 of the Letters Patent of the Court.

Babu *Lakshmi Narain*, for the appellant.

Babu *Parbati Charan Chatterji* and Pandit *Baldeo Ram Dave*, for the respondents.

STANLEY, C.J., and BURKITT, J.—This is an appeal from a decision of a learned Judge of this Court affirming the decision of the District Judge, which upheld the decree of an Assistant Collector of Etawah. The suit is one by the plaintiff, a co-sharer in the village, to recover his share of the profits of the village from the two lambardars, Mukhta Prasad and Musammat Mohan Kunwar, for the years 1309 to 1310 fasli. The plaintiff owns about $\frac{1}{12}$th of the village and is entitled to that proportion of the profits of the village. The defence set up was that the plaintiff was wrong in suing both the defendants jointly, and that he should have sued each one of them separately for the amount of the profits which might have been collected respectively by each.

Now as to that matter our learned brother remarks :—"I would have thought that the office of lambardar, even though exercised by several persons, was a joint office and that the fact that each made separate collections was a mere matter of convenience between themselves." In this view of the law we entirely concur. When these two defendants were appointed lambardars, they were appointed jointly as lambardars responsible to Government for the payment of the revenue of the joint mahal and responsible jointly to the co-sharers for their shares of its profits. The fact that these two lambardars for convenience sake may have divided the village amongst themselves and one of them may have collected profits in one portion and the other in another portion is a matter with which the other co-sharers have no concern. It is a matter of private arrangement made by the lambardars for their own convenience. It is an arrangement which may be retained or altered from year to year if the lambardars so chose, but it does not compel any one co-sharer to look to any one lambardar as the person responsible to him for his share of the profits.

Great reliance is placed on a question of *res judicata* which arises out of a decision by an Assistant Collector of the first class in a previous suit. That suit was by the same plaintiff against the same defendants. The latter pleaded that they were not liable to be sued jointly and the Court of the Assistant Collector held that that plea was correct and dismissed the suit. The plaintiff did not appeal, but instituted two separate suits. It is contended that the decision of this case is *res judicata* and governs the present case. In that argument we are unable to concur. What was then decided in that case was that the two lambardars were not jointly responsible to the plaintiff for his share of the profits of the year then in suit by reason of the arrangement between the defendants. The present suit has nothing whatever to do with the profits that were in suit then. For all we know the arrangement between the lambardars may have changed completely; but as a matter of law the defendants are jointly responsible to the plaintiff for his share of the undivided profits of the mahal. It is futile for the defendants—and specially the defendant Mukhta Prasad—to say to the plaintiff:—"I have collected a very small

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share of your profits; therefore you should not sue me jointly with the other defendant; you must sue both separately." That, we think, is not the correct view of the law in view of the joint responsibility of the respondents. This suit has been dismissed in all the lower Courts on the ground that the decision of the Assistant Collector, to which we have just referred, operates as a *res judicata*. In our opinion that conclusion is wrong. We must therefore allow this appeal, set aside the judgment of all the lower Courts as also of the learned Judge of this Court, and as the suit was decided in the Court of first instance on the preliminary point that it was not maintainable against the two defendants, we remand the record through the lower appellate Court to the Court of first instance under section 562 of the Code of Civil Procedure to be replaced on the file of pending cases and tried on the merits. Costs here and hitherto will abide the event.

*Appeal decreed and cause remanded.*

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

DAMMAR SINGH AND ANOTHER (PLAINTIFFS) *v.* PIRBHU SINGH AND ANOTHER (DEFENDANTS).*

*Civil Procedure Code, section* 443—*Guardian ad litem—Appointment of guardian ad litem other than the certificated guardian.*

*Held* that the appointment, apparently by an oversight, as guardian *ad litem* to a minor defendant of a person other than the certificated guardian amounted to no more than an irregularity and would not of itself vitiate either a decree passed in a suit or a sale consequent upon such decree.

THE facts of this case are as follows. Pirbhu Singh and another sued Dammar Singh and another who were minors, and had their mother Rukhmina Kunwar appointed guardian *ad litem*. This was done apparently in ignorance of the fact that one Jhunni Singh had been appointed certificated guardian of the minor defendants. In the suit so brought the plaintiffs obtained a decree and some property of the minors was brought to sale. The defendants then brought the present suit asking for a declaration that the decree and sale in the former suit were void on the ground that they had not been properly represented. The Court of first

* Second Appeal No. 1214 of 1905 from a decree of Babu Madho Das, Subordinate Judge of Shahjahanpur, dated the 6th of September 1905, confirming a decree of Babu Keshab Das, Munsif of Sahaswan, dated the 29th of April 1905.