

in fact resembles more that of *Jafar Husen v. Ranjit Singh* (1) than that of *Kashi Ram v. Sardar Singh* (2). In the first mentioned of these cases the Court came to the conclusion that the intention of the parties was that the debt was realizable by sale of the mortgaged property, whereas in the other case, this Bench was of opinion that the mortgage in suit was merely a usufructuary mortgage. For these reasons we dismiss the appeal with costs.

Appeal dismissed.

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

TIKAM SINGH AND ANOTHER (DEFENDANTS) v. KHUBI RAM AND ANOTHER
(PLAINTIFFS).*

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

In the absence of a custom to the contrary a lambardar has no power, without the consent of the co-sharers, to grant a lease of coparcenary land beyond such term as the circumstances of the particular year or season may require. *Cratray v. Nawala* (3) followed. *Mukhta Prasad v. Kamta Singh*, (4) distinguished.

THIS was a suit brought by certain co-sharers in the village for a declaration that a lease executed by defendant No. 4, the lambardar, of 160 bighas odd, cultivatory holding, in the village of Edalpur for a term of seven years was void as against them, on the allegation that the lambardar had acted in excess of his powers in granting the lease, and had done so at an inadequate rental in order to injure the plaintiffs. The Court of first instance (Munsif of Haveli, Aligarh) decreed the plaintiffs' claim. The lessees appealed. The lower appellate Court (Additional District Judge of Aligarh) found that the rental was inadequate and the term too long, and accordingly dismissed the appeal and confirmed the Munsif's decree. The defendants lessees thereupon appealed to the High Court.

Babu Parbati Churan Chatterji, for the appellants.

* Second appeal No. 151 of 1907 from a decree of Khetter Mohan Ghosh, second Additional Judge of Aligarh, dated the 8th of November 1906, confirming a decree of Banke Behari L.L. Munsif of Haveli, dated the 25th of June 1906.

(1) (1898) I. L. R., 21 All., 4. (3) (1906) I. L. T., 29 All., 20.
(2) (1905) I. L. R., 28 All., 157. (4) Weekly Notes, 1906, p. 277.

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NABPAT
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TIKAM
SINGH
v.
KHUBI RAM.

Munshi *Gobind Prasad* and Munshi *Gulzari Lal*, for the respondents.

STANLEY, C.J., and BURKITT, J.—The suit out of which this appeal has arisen was brought by the plaintiffs, who are two of the co-sharers of a village, to have a lease executed by the lambardar of the village in favour of the defendants set aside. The defendants are also co-sharers of this village. The lambardar and the other co-sharers were all made parties to the suit. The lease was for a term of seven years, and it is alleged and has been proved that it was made at an inadequate rent.

The Court below set it aside on, amongst other grounds, the ground that a lease by a lambardar for a term of seven years under ordinary circumstances could not be supported. This is a rule which has been acted upon by this Court for a number of years, and was followed by a Bench of this Court in the case of *Chattray v. Nawala* (1). In that case a Bench, of which one of us was a member, held that it was reasonable that a manager should have power to make temporary lettings, but the duties imposed upon him did not seem to admit of his executing in favour of a lessee without the consent of the coparcenary body a lease for a long term of years, and then we pointed out that there was nothing to show that the exigencies of the season or time when the impeached lease was granted required that the grant should be made for so long a term as seven years. This decision followed previous rulings and is in no way inconsistent with the case of *Mukta Prasad v. Kamta Singh* (2). In that case it was held that a lambardar was competent to execute a lease of land for ten years without reference to other co-sharers where the land could not otherwise be let and where it was for the benefit of the co-sharers that the land should be so let. In his judgment in that case Sir Arthur Strachey, C.J., observed as follows:—"It appears that this land is of inferior quality and it contained no pacca well for the purposes of irrigation. Upon the facts found by the Court below it appears that if the lambardar had not executed this lease for ten years, the land would not have been cultivated at all and would have yielded no profit to the coparceners." It will therefore be observed that the

(1) (1906) I. L. R., 29 All., 20. (2) Weekly Notes, 1906, p. 277.

circumstances of that case were exceptional. The rule appears to be, as we have stated, that a lambaradar cannot of himself execute a lease of land beyond such term as the circumstances of the particular year or season may require. We therefore dismiss the appeal with costs.

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THE AM
SINGH
v.
KRUHI RAM.

Appeal dismissed.

Before Mr. Justice Sir George Knox and Mr. Justice Aikman.
SUNDAR DEO (PLAINTIFF) v. BHAGWAN DAS AND OTHERS
(DEFENDANTS).*

1908
February 7.

*Act No. IX of 1872 (Indian Contract Act), section 178—Pawnor and pawnee—
Pawnor not owner but having a right to possession—Suit by owner for
declaration of his title.*

A person who had obtained possession of certain movable property belonging to a minor in the capacity of a trustee, and who had been allowed to retain possession of such property after the minor came of age, pawned some of it to persons who were found to have acted, negligently perhaps, but honestly and in good faith. *Held* that the pledge was valid, but the owner was entitled to a declaration of his right to redeem the articles so pawned.

THIS was a suit brought for a declaration of the plaintiff's right to redeem certain property, which had been pawned under the following circumstances. According to the plaint his grandfather left the plaintiff at the time of his death a minor and not fit to manage his affairs, and therefore he appointed Babu Ki-han Dat an agent and made over all the jewelry and property to him in trust for the plaintiff. The plaintiff attained majority, but allowed the defendant to continue in possession of the aforesaid property on his behalf. He subsequently found out that a considerable portion of the property had been pawned by Kishan Dat through Lachmi Nandan, another of the respondents and brother-in-law of Kishan Dat, to the other three respondents. Kishan Dat and Lachmi Nandan were prosecuted and convicted of embezzlement with regard to the said property. The ornaments were during the criminal trial deposited in the Criminal Court. This suit was brought under the direction of that Court to declare the plaintiff's right to possession of them. The Court of first instance (Subordinate Judge of Agra) gave the plaintiff a declaration that the plaintiff was entitled to redeem

* Second Appeal No. 993 of 1905 from a decree of A. B. Bruce, District Judge of Agra, dated the 29th of September 1905, confirming a decree of Shankar Lal, Subordinate Judge of Agra, dated the 20th of April 1905.