1908

BAIJNATH SINGH v. PALTU.

to the fact, we think that both parties should abide their own costs in the Courts below and we order accordingly. As to the costs of this appeal, the plaintiff, we think, if he pay the purchase money, is entitled to them, and we so order.

Appeal decreed.

1908
January 4.

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

BHURA (PLAINTIFF) *v.* SHAHAB-UD-DIN (DEFENDANT).*

Act (Local) No. II of 1901 *(Agra Tenancy Act), section* 22—*Occupancy holding—Succession.*

Under the Agra Tenancy Act of 1901 the personal law of the parties concerned is no longer applicable to the case of succession to an occupancy holding, but the holding descends to all the male lineal descendants in the male line of descent of the last owner, without exclusion by the nearer of the more remote.

THE facts of this case are as follows. One Kallu had an occupancy holding. He also had three sons, Bhura, Nathu and Khuda Bakhsh. The two latter died in Kallu's life-time. In August 1904, after the death of Kallu, Bhura obtained from the Revenue Court a decree ejecting the sons of Nathu from a portion of the occupancy holding. The Court in that suit found that under section 22 of the Agra Tenancy Act, 1901, the nearer descendant excluded the more remote. The present suit was brought to eject Shahab-ud-din, the son of Khuda Bakhsh. This suit was brought in the Court of the Subordinate Judge of Dehra Dun, and was dismissed on the preliminary question of want of title in the plaintiff. The plaintiff appealed to the District Judge of Saharanpur, who agreed with the Court below. The plaintiff thereupon appealed to the High Court.

Pandit *Mohan Lal Nehru*, for the appellant.

Maulvi *Muhammad Ishaq*, for the respondent.

STANLEY, C.J., and BURKITT, J.—In our opinion the decision of the learned District Judge affirming the decision of the Subordinate Judge is correct. The question is as to the interpretation to be put on the first clause of section 22 of the Agra Tenancy Act, II of 1901. That clause in the matter of the succession

* Second Appeal No. 408 of 1906 from a decree of L. G. Evans, District Judge of Saharanpur, dated the 15th of March 1906, confirming a decree of S. P. O'Donnell, Subordinate Judge of Dehra Dun, dated the 9th of November 1905.

(*inter alia*) to an occupancy tenant provides that on the death of the tenant his interest in the holding shall devolve on his male lineal descendants in the male line of descent. The appellant and the respondent to this appeal are both male lineal descendants of the last tenant in the male line of descent. The appellant is his son, while the respondent is his grandson. As the respondent's father predeceased his father, the last tenant, the respondent would be excluded under the Rent Act of 1881, section 9, which by the words "as if it were land" made the personal law of the party applicable to the descent of an occupancy holding. The appellant therefore desires us to read into section 22 of the Act now in force, such words as would make the tenure descend as if it were land, thus excluding the respondent. As a reason for his contention his learned vakil pointed out that some unexpected results might follow from a literal interpretation of section 22. For instance, in the case of the death of a tenant leaving several sons, grandsons and even great-grandsons, he argues that under the words of section 22 the tenure might be held to devolve simultaneously on all.

As to that matter we do not consider it necessary to express any opinion now. There can be no doubt that the new Tenancy Act has completely altered the rule of devolution in the case of a tenancy such as that in question here. The tenancy no longer devolves "as if it were land," but on the lineal male descendants of the last tenant. The Legislature has chosen to alter the law, and we can see no reason why we should not assume that the new provision was deliberate and intentional. The parties here are Muhammadans, whose personal law gives a share in the estate of a deceased Muhammadan to daughters, wives, sisters and other females, who are excluded by the words "male lineal descendants" in section 22 of the new Act. If we apply the Muhammadan law for the purpose of excluding the respondent, it is difficult to see why we should not apply it to include females, whom the first clause of section 22 excludes when there are "lineal male descendants." We dismiss this appeal with costs.

Appeal dismissed.