defendants, who would be entitled to redeem the mortgage on the date mentioned in the mortgage bond. In the present case the plaintiff is not entitled to any relief whatsoever. In this view of the case, we allow the appeal, set aside the decrees of the courts below and dismiss the plaintiff's suit with costs in all courts.

Appeal decreed.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Banerji.

HARCHARAN AND OTHERS (PLAINTIFFS) *v.* BINDU AND OTHERS (DEFENDANTS).*

Suit for profits—Limitation—Adverse possession—Profits collected by co-sharers—Suit by other co-sharers to recover their shares.

Co-sharers who collect profits for other co-sharers are in a position similar to that of a lambardar. Where no adverse title has been set up, the mere fact that a co-sharer plaintiff has not received profits for more than twelve years before suit will not bar his claim.

Raj Bahadur v. *Bharat Singh* (1) and *Mihin Lal* v. *Badri Prasad* (2) followed.

THIS was an appeal under section 10 of the Letters Patent from a judgement of AIKMAN, J. The facts of the case sufficiently appear from the judgement under appeal, which was as follows:—

"The respondent Kali Charan brought a suit to recover a share of the profits of certain *shamlat* land belonging to a village in which he owns a share. None of the defendants was a lambardar. They were co-sharers in the village. The court of first instance found that there was no evidence that either the plaintiff or his predecessor in title had ever received any profits of his share in the *shamlat* land and dismissed the suit on this ground. On appeal the learned District Judge professing to follow the ruling in *Mihin Lal* v. *Badri Prasad* (1) gave the plaintiff a decree. The defendants come here in second appeal. In the case relied on by the learned Judge it will be seen from the concluding portion of the judgement at page 439 that great stress was laid on the fact that the defendant was a lambardar and it was remarked that the possession of a lambardar is not adverse possession. In my opinion the same principle cannot be applied to the case of co-sharers. If the defendants here appropriated to themselves the whole profits of the *shamlat* land, they thereby, I hold, gave notice to the plaintiff that they were setting up a title adverse to him, and if they did so for upwards of 12 years, as in this case, the plaintiff's claim would be barred. A case like the present is distinguishable from the case of co-owners in a joint family. In my opinion the Assistant Collector was right. I allow the appeal with costs, set aside the decree of the lower appellate court with costs and restore that of the court of first instance."

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* Appeal No. 58 of 1909 under section 10 of the Letters Patent.

(1) (1904) I. L. R., 27 All., 348. (2) (1905) I. L. R., 27 All., 436.

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LARCHARAN v. BINDU.

The plaintiffs appealed.

On this appeal—

Babu *Durga Charan Banerji*, for the appellants, submitted that the mere fact that the respondents co-sharers took the profits for the last twelve years before the suit could not make their possession adverse. There must be an assertion of adverse possession and repudiation of other co-sharers' title. He cited *Mihin Lal* v. *Badri Prasad* (1) and *Raj Bahadur* v. *Bharat Singh* (2). Possession of a lambardar was not adverse, and similarly the possession of a co-sharer could not be adverse.

Pandit *Mohan Lal Sandal*, for the respondents, submitted that a lambardar stood in a fiduciary relation to other co-sharers. The case of a co-sharer in exclusive possession was different. The withholding of one year's profits was notice enough that other title was being repudiated and that repudiation led to an adverse title to the plaintiffs' rights where the profits were withheld for more than twelve years. He cited *Tulsi Singh* v. *Lachman Singh* (3).

STANLEY, C. J., and BANERJI, J.—The suit out of which this appeal has arisen was brought by the plaintiffs appellants for their share of profits of *shamlat*, that is, common land. The court of first instance dismissed the suit on the finding that the plaintiffs had not received their share of profits within 12 years preceding the date of the suit. The lower appellate court found that there was no evidence of any adverse claim or repudiation of the plaintiff's title by the defendants, and held that the mere non-payment of profits did not extinguish the plaintiffs' right. It accordingly decreed the claim.

On appeal to this Court the learned Judge before whom the case came disagreed with the view of the lower appellate court and restored the decree of the court of first instance. From this judgement the present appeal has been preferred under the Letters Patent.

We are unable to agree with the view of the learned Judge of this Court. He draws a distinction between the case of a lambardar and the case of co-sharers making collections for the

(1) (1905) I. L. R., 27 All., 436. (2) (1904) I. L. R., 27 All., 848.
(3) Weekly Notes, 1881, p. 20.

whole co-parcenary body. We fail to see any such distinction. Co-sharers who make collections for themselves and other co-sharers are in the same position as regards the amounts collected as a lambardar. In the case of a lambardar it was held in *Mihin Lal* v. *Badri Prasad* (1) that the fact that a co-sharer plaintiff has received no profits for 12 years previous to the suit from the lambardar is not by itself sufficient to bar the suit in the absence of evidence that the defendant lambardar was during those 12 years holding adversely to the plaintiff. In this case the ruling in *Raj Bahadur* v. *Bharat Singh* (2) was approved of. That was a case in which a co-sharer in an undivided mahal claimed to recover a share in the profits of certain *sir* land appertaining to the mahal. It was held that the mahal being undivided the defendant's possession of the *sir* land had never really been possession hostile to the plaintiff, and in the absence of any repudiation of the right of the plaintiff or his predecessor in title to enjoy the profits or to be in possession of their share of the *sir* lands, the claim was not time-barred. The principle of these rulings fully applies to the present case. The learned Judge of this Court says:—" If the defendants have appropriated to themselves the whole profits of the *shamlat* land, they thereby, I hold, gave notice to the plaintiff that they were setting up a title adverse to him, and if they did so for upwards of 12 years, as in this case, the plaintiff's claim would be barred." We wholly disagree with this view. The appropriation of profits cannot be regarded as notice to the co-sharers that their title was repudiated. As it was found in this case by the lower appellate court that the plaintiffs' title was never denied and that there was no evidence of any adverse claim on the part of the defendants for a period of 12 years, the plaintiffs' claim was not time-barred, and the lower appellate court was right in decreeing it.

We accordingly allow the appeal, set aside the decree of this Court and restore that of the lower appellate court with costs.

Appeal decreed.

(1) (1905) I. L. R., 27 All., 436. (2) (1904) I. L. R., 27 All., 348.