

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

RIKHAI RAI AND ANOTHER (DEFENDANTS) v. SHEO PUJAN SINGH

(PLAINTIFF).*

1910
June 9.

Hindu law—Widow—Legal representative—Reversionary heirs—Civil Procedure Code (1908), section 2 (11)—Act Local No. II of 1901 (Agra Tenancy Act) section 202.

One S. K. filed a suit for possession of certain lands and for cancellation of a perpetual lease executed by her mother, but died during the pendency of the suit. *Held* that the reversionary heir of the last male owner of the property in suit was the proper legal representative of the plaintiff.

Held, also, that where the defendant simply alleged that he was in possession of the land in suit as a tenant but did not allege that he was a tenant of the plaintiff, the Civil Court need not require the defendant to institute a suit in the Revenue Court as directed by section 202 of the Agra Tenancy Act, 1910.

THE facts of this case were as follows :—

One Musammat Sheo Kunwar sued for possession of certain lands and for cancellation of a perpetual lease executed by her mother Atrajo Kunwar in favour of the defendants. Sheo Kunwar died during the pendency of the suit. Sheo Pujan (respondent) was brought on the record as an heir to the estate of the deceased plaintiff's father. The defence was that the defendants were the tenants of Sheo Kunwar; that consequently the Court ought to have proceeded under section 202 of Act II of 1901; that the suit had abated on the death of the plaintiff (Sheo Kunwar) and that Sheo Pujan was not entitled to proceed with the suit. Both the courts below decreed the claim. The defendants appealed.

Munshi Govind Prasad (with him The Hon'ble Nawab Muhammad Abdul Majid), for the appellants, contended that Sheo Pujan being a reversioner was not the legal representative of Sheo Kunwar. He could have sued in his own right. One reversioner cannot represent another reversioner. He relied on *Bhagwanta v. Sukhi* (1), *Balak Puri v. Durga* (2) and *Sakyahani Ingle Rao Sahib v. Bhavani Bozi Sahib* (3).

Babu Sital Prasad Ghosh, for the respondent, was not called upon, but cited section 2, cl. (11), of the Code of Civil Procedure.

* Second Appeal No. 29 of 1910, from a decree of Sri Lal, District Judge of Ghazipur, dated the 13th of October, 1909, confirming a decree of Chajju Mal, Subordinate Judge of Ghazipur, dated the 26th of July, 1909.

(1) (1899) I. L. R., 24 All., 33. (2) (1907) I. L. R., 30 All., 49.
(3) (1904) I. L. R., 27 Mad., 588.

1910

REKHAJ RAI
v.
SHEO PUJAN
SINGH.

STANLEY, C. J., and GRIFFIN, J. :—The suit in this case was brought by the plaintiff to recover possession of 60 bighas of *sir* land, which were leased in perpetuity to the defendants by one Musammat Atrajo Kunwar, the mother of the plaintiff. The plaintiff Musammat Sheo Kunwar died during the pendency of the suit, and thereupon the respondent Sheo Pujan Singh, as the reversionary heir of Baldeo Rai, the last male owner, was placed upon the record in place of Musammat Sheo Kunwar. A decree in his favour was passed by the court of first instance which was confirmed by the lower appellate court. This second appeal has been preferred, and the main ground of appeal is that the cause of Sheo Kunwar was personal and did not survive to the respondent, the reversionary heir. There appears to us to be no force in this contention. Prior to the passing of Act V of 1908 there are several authorities to be found on the point raised. In the case of *Katama Natchier v. The Raja of Shivagungra* (1) their Lordships of the Privy Council held that upon the death of a Hindu widow the right of action formerly vested in her devolves not upon her heirs but upon the next heirs of her husband." In the case of *Premmoyi Choudhrani v. Preonath Dhur* (2) it was held by MACPHERSON and HILL, JJ., that on the death of a Hindu heiress after the institution of a suit to recover property belonging to her deceased husband, the reversionary heirs of her husband were her legal representatives within the meaning of section 365 of the Code of Civil Procedure. Again in the case of *Tribhuvan Sundar Kuar v. Sri Narain Singh* (3) it was held by our brothers BANERJI and AIRMAN that a reversioner succeeding to the estate of a deceased person after the death of the widow of that person would be bound by a decree obtained against the widow, provided that there was a fair trial of the suit in which the decree was passed, and that consequently the widow's right to sue survives to and devolves upon the heir of the husband entitled to the estate, and such heir, and not her personal heirs, should be her legal representative for the purposes of section 365 of the Code of Civil Procedure. When we turn to the definition of "legal representative" contained in section 2 of

(1) (1863) 9 Moo. I. A., 543, (2) (1896) I. L. R., 23 Cal., 636.

(3) (1898) I. L. R., 20 All., 341.

Act V of 1908, the question seems to us to be set at rest. Legal representative, as defined in that section, means "a person who in law represents the estate of the deceased person, and includes any person who intermeddles with the estate of the deceased, and where a person sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued." It seems to us clear from this definition that the plaintiff as the reversionary heir to the estate of Baldeo Rai was entitled to be placed on the record in the place of Musammatt Sheo Kunwar and to prosecute the suit as representing the estate of Baldeo Rai. There is no force therefore in this ground of appeal.

It is contended further that a tenancy subsists between the defendants appellants and Musammatt Sheo Kunwar, and that action ought to have been taken under section 202 of Act No. II of 1901 and not in a Civil Court. There appears to be equally no force in this ground of appeal. The defendant Rikhai Rai in his written statement did not allege that he was a tenant of the plaintiff. He simply stated that he was in possession of the land in question as a tenant and that the plaintiff was the owner and zamindar. We agree in the conclusion arrived at by the lower appellate court as to this. For these reasons we think the decision of the courts below is correct and dismiss the appeal with costs.

Appeal dismissed.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Griffin.
 JAGANNATH PRASAD AND OTHERS (DEFENDANTS) v. RUSTAM ALI AND
 OTHERS (PLAINTIFFS).*

1910
 June 11.

Lambardar and co-sharer—Powers of lambardar—Lease of timber-bearing common land for the purpose of cutting the timber and making charcoal.

Held that a lambardar has ordinarily no authority to grant leases of timber-bearing common land of the village to lessees for the purpose of having the timber cut and converted into charcoal.

THE facts of this case were as follows :—

Four persons, lambardars of a village, gave for a term of three years, a lease to the plaintiffs of a jungle in the village on 27th

* Second Appeal No. 17 of 1910, from a decree of F. S. Taber, District Judge of Banda, dated the 7th of October, 1909, modifying a decree of Achal Bihari, Subordinate Judge of Banda, dated the 19th of July, 1909.