

of Hargian in the property mortgaged by him along with three other persons, is 4 bighas, 18 biswas, and the entire sum of Rs. 1,500 is a charge upon the entire property amounting to 26 bighas, 5 biswas. The charge on the share of Hargian is, therefore, in the proportion of the value of 4 bighas, 18 biswas to the value of 26 bighas, 5 biswas. We are supported in this view by the ruling of this Court in *Sita Ram v. Nand Ram* (1). As the lower appellate court has not come to any finding regarding the value of the share of Hargian and the value of the entire property mortgaged on the 29th January, 1909, we refer the following issue to that court for a finding:—What are the proportionate values of the share of Hargian and of the entire mortgaged property? The court will be at liberty to take such additional evidence as the parties may adduce. Ten days will be allowed for objections on return of the finding.

*Issues remitted.*

*Before Mr. Justice Sir Henry Griffin and Mr. Justice Chamier.*

ALI BAKHSH AND OTHERS (DEFENDANTS) v. BARKAT-ULLAH AND OTHERS (PLAINTIFFS).\*

1912  
March 15.

*Act (Local) No. II of 1901 (Agra Tenancy Act), section 22—Succession—Special rule of succession exclusive of personal law of parties.*

*Held* that the rule of succession which is laid down by section 22 of the Agra Tenancy Act, 1901, is independent and exclusive of the personal law of the parties to whom the section applies. Consequently the grandsons of a deceased occupancy tenant, as his male lineal descendants, would be entitled to share in the tenancy jointly with the sons of the late tenant. *Bhura v. Shahab-ud-din* (2) followed.

The facts of the case are as follows:—

One Chidda, a Muhammadan occupancy tenant, left four sons, the defendants appellants, and three grandsons by a pre-deceased son, the plaintiffs respondents. The revenue court entered, on the basis of possession, the names of the defendants to the exclusion of the plaintiffs. Hence the plaintiffs sued for joint possession. The Munsif decreed the claim for joint possession over one-fifth of the holding. Both parties appealed. The District Judge practically upheld the decree of the Munsif, modifying it as regards the payment of costs. The defendants appealed.

\* Second Appeal No. 506 of 1911 from a decree of S R. Daniels, First Additional Judge of Moradabad, dated the 14th of February, 1911, modifying a decree of Sarup Narsin, Munsif of Sambhal, dated the 23rd of September, 1910.

(1) Weekly Notes, 1881, p. 80.

(2) (1907) I. L. R., 30 All., 128.

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The case came up for hearing before KNOX, J., who referred it to a Division Bench by the following order :

“ The question raised in this appeal appears to be *res integra*. The only authority quoted to me is *Bhura v. Shahab-ul-din* (1). I think it expedient that the case should be laid before a Bench of two Judges.

Mr. *A. H. C. Hamilton*, for the appellants :—

According to the personal law of the Muhammadans the plaintiffs would have got nothing. It was never the intention of the Legislature to alter completely the Muhammadan law of succession by the enactment of section 22 of the Tenancy Act. Although it does to a certain extent override the personal law, the courts should carry out the provisions of that section in a way so as to harmonize them with the personal law of the parties. When among “ the male lineal descendants ” the sons are alive, the sons of a pre-deceased son can have no right whatever to the occupancy of the holding. When the statute law has superseded the personal law of the parties, the former is to be followed, but where the statute is silent, the personal law applicable to the parties should, so far as possible, be followed. The operation of the section is to be considered as subject to the personal law of the parties so far as the latter is not inconsistent with the former. The law of succession of the Hindus and Muhammadans has not been wholly abrogated by the provisions of section 22. In several cases, decided by this Court the principle of the right of survivorship among joint tenants has been recognized. It follows from this that the personal law of the parties is to be taken into consideration so far as it can consistently be done in interpreting clause (a) of section 22 of the Tenancy Act. It is submitted that the “ male lineal descendants ” are to succeed first, as provided by section 22, but that they are entitled to preference in the order of succession, according to the personal law to which they are subject.

Pandit *Mohan Lal Sanjal*, for the respondents :—

The main question in dispute is, whether the plaintiffs took equally with the defendants, in which case the plaintiffs' share would be three-sevenths of the holding and not one-fifth, over which the lower courts have given a decree in favour of the plaintiffs.

(1) (1907) I. L. R., 30 All., 128.

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The parties are entitled to share in the occupancy holding, *per capita* and not *per stirpes*. Although this point was not pressed in the lower appellate court, the respondents can raise this point here by filing cross-objections; *Shankar Lal v. Sarup Lal* (1). The personal law of the parties had nothing to do with the order of succession provided by section 22 of the Tenancy Act, and there is no warrant for holding that the nearer "male lineal descendant" would exclude the more remote; *Bhura v. Shahab-ud-din* (2).

Mr. A. H. C. Hamilton was heard in reply.

GRIFFIN and CHAMIER, JJ. :—One Chhidda, a Muhammadan, was an occupancy tenant of a holding. He died, leaving four sons and three grandsons, the sons of a deceased son. The latter brought the suit out of which this appeal has risen, claiming possession of a  $\frac{3}{4}$ th share of the occupancy holding. The court of first instance gave the plaintiffs a decree for a  $\frac{1}{4}$ th share in the holding, *i.e.*, the extent of the share which their father would have been entitled to, if he had been alive on the death of Chhidda. Both parties appealed to the lower appellate court. The plaintiffs' appeal was dismissed. The defendants' appeal was successful so far that the decree of the first court was modified and in lieu of a decree for possession a decree was given declaring the plaintiffs to be joint sharers in the holding to the extent of  $\frac{1}{4}$ th. The defendant's appeal against the decree of the lower appellate court and the plaintiffs have filed cross-objections. We are asked in this appeal to read the personal law of the parties into section 22 of the Tenancy Act. In our opinion the personal law of the parties has nothing to do with the rule of succession which is laid down by section 22 of the Tenancy Act. It was so held by this court in *Bhura v. Shahab-ud-din* (2). In that case the son of a Muhammadan occupancy tenant tried to oust the grandson of the last holder of the tenancy, and he was unsuccessful. Under section 22, the tenancy devolved on the male lineal descendants of the last holder of the tenancy. The plaintiffs are male lineal descendants of Chhidda and therefore entitled to share in the tenancy.

The court of first instance held that the plaintiffs were entitled to a  $\frac{1}{4}$ th share only. The plaintiffs' appeal to the lower appellate court was dismissed. They have not appealed to this Court.

(1) (1911) I. L. R., 34 All., 140. (2) (1907) I. L. R., 30 All., 128.

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Therefore the decision that they were entitled to a one-fifth share only has become final.

The cross-objection of the plaintiffs that they were entitled to possession must be sustained. There is nothing to prohibit the granting of a decree for joint possession. We dismiss the appeal with costs. We allow the objection so far that we restore the decree of the court of first instance. The plaintiffs will obtain their costs of the objection.

*Appeal dismissed.*

## REVISIONAL CIVIL.

1912  
March 10.

*Before Mr. Justice Binerji.*

GREAT INDIAN PENINSULA RAILWAY (DEFENDANT) V. SHAM  
MANOHAR AND ANOTHER (PLAINTIFFS).\*

*Act No. IX of 1890 (Indian Railways Act), sections 80, 75—Suit for compensation for loss of through-booked goods—Short delivery—Uninsured goods.*

*Held* that where goods are booked for conveyance over more than one railway system the owner can only claim compensation for loss against a railway company other than the company with which they were booked, if it is shown that the loss occurred on the system of the company sued.

*Held also* that if goods, the insurance of which is obligatory, are packed uninsured with other goods, the insurance of which is not obligatory, no compensation is obtainable for the loss of either class of goods. *Pandlik Udaji Jadhav v. S. M. Railway Company* (1) followed.

The facts of the case are as follows :—

The plaintiff booked six packages containing various kinds of goods from the Etawah station on the East Indian Railway, to be delivered at Jhansi, a station on the Great Indian Peninsula Railway. Out of the six packages three were not delivered at Jhansi. The plaintiffs sued the East Indian, the Oudh and Rohilkhand and the Great Indian Peninsula Railways. The claim against the Oudh and Rohilkhand Railway was withdrawn by the plaintiffs.

The lower court dismissed the plaintiffs' claim against the East Indian Railway on the ground that no notice under section 77 of the Indian Railways Act was given to that Company, but it decreed part of the claim against the Great Indian Peninsula Railway deducting from the claim the value of those articles which

\* Civil Revision No. 6 of 1912.

(1) (1909) 11 Bom. L. R., 827.