

Singh were separate, but it has also found that it was not established that any fraud or misrepresentation had been practised on Musammat Kokla and accordingly decreed her suit.

The learned Judge of this Court held that under the circumstances the petition filed in mutation proceedings must be regarded as a family settlement and it did not require registration, and on these grounds dismissed the plaintiff's suit.

In our opinion, it must be presumed from the whole proceedings commencing with the petition for mutation, the order of the revenue authorities recording the names in accordance with the petition, and the subsequent sales upon the strength of this record, that the parties entered into a family arrangement. On these grounds we think the decree of the learned Judge of this Court ought to stand. We, therefore, dismiss the appeal with costs.

Appeal dismissed.

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Sir Pramada Charan Banerji.

SRI KISHAN DAS AND ANOTHER (PLAINTIFFS) v. YAKUB KHAN AND OTHERS (DEFENDANTS).*

Landlord and tenant—Tenant in possession without a patta—Suit to enforce hypothecation of property as security for rent.

Held that a hypothecation of other property by certain tenants as security for their rent was none the less enforceable because, though the tenants had executed a kabuliati in respect of the land held by them, no patta had been executed by the landlords in their favour. Sheo Karan Singh v. Maharaja Parbhu Narain Singh (1) referred to.

THIS was a suit to enforce a hypothecation of certain property executed by tenants as security for their rent. The tenants were in possession of the land leased to them, in respect of which rent was due, and had executed a kabuliati therefor; but no patta had been executed in their favour by the landlords, and upon this ground it was contended that no rent was legally exigible and the security was not enforceable. The court of first instance decreed the claim; but the lower appellate court gave effect to the defendants' contention and reversed this decree. The plaintiffs appealed to the High Court.

* Second Appeal No. 82 of 1913, from a decree of Abdul Hasan, Additional Subordinate Judge of Moradabad, dated the 21st of September, 1912, reversing a decree of Sidheshwar Mitter, Munsif of Amroha, dated the 23rd of September 1911.

1913

KOKLA

v.

PIARI LAL.

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SRI KISHAN
DAS
v.
YAKUB
KHAN.

The Hon'ble Dr. *Tej Bahadur Sapru*, for the appellants.

The Hon'ble Pandit *Moti Lal Nehru*, for the respondents.

RICHARDS, C. J. AND BANERJI, J.—The decision of the court below in this case cannot be supported. Ismail Khan and Zarina Khatun were admittedly in possession of the property leased to them by the plaintiffs. To secure the rent which they agreed to pay for such use and occupation, they hypothecated their property. The present suit was one to enforce the hypothecation. The suit was clearly maintainable, and the court below was wrong in holding that because no *patta* was granted to the executants of the *kabuliat*, the rent agreed to be paid was not payable and the security for its payment could not be enforced. This case is similar in some respects to that of *Sheo Karan Singh v. Maharaja Prabhu Narain Singh* (1). We allow the appeal, set aside the decree of the court below and remand the case to that court under order XLI, rule 23, of the Code of Civil Procedure with directions to re-admit it under its original number in the register and to dispose of the other questions which arise in the case. The appellant must have the costs of this appeal. Other costs will follow the event.

Appeal decreed and cause remanded.

APPELLATE CRIMINAL.

Before Mr. Justice Tudball and Mr. Justice Byves.

EMPEROR v. RAM NEWAZ.

Act No. XLV of 1860 (Indian Penal Code, sections 37, 302, 304—Murder—Culpable homicide not amounting to murder—Fatal assault with lathis by three persons acting in concert.

Three persons, brothers, attacked with *lathis* a fourth, against whom they bore a grudge, and beat him with great severity, so that he died shortly afterwards. His skull was badly fractured, and numerous other injuries were inflicted upon him. It did not appear which injuries were caused by which of the assailants, but the evidence showed that they were acting in concert and intended to cause such bodily injury as was likely to cause death. *Held* that all three assailants were guilty of murder. *King-Emperor v. Subbappa Okunnappa* (2) and *King-Emperor v. Kanhai* (3) followed *Emperor v. Bhola Singh* (4), *Queen Empress v. Dama Baiya* (5), *Govindas Namasudra v. Emperor* (6), *Empress v. Dharam Bai* (7) and *Dhian Singh v. King Emperor* (8) distinguished.

* Criminal Appeal No. 401 of 1913 by the Local Government from an order of Pitambar Joshi, Sessions Judge of Banda, dated the 5th of March, 1913.

(1) (1909) I. L. R., 31 All., 276.

(2) (1912) 15 Bom. L. R., 303.

(3) (1912) I. L. R., 35 All., 329.

(4) (1907) I. L. R., 29 All., 232.

(5) (1896) I. L. R., 19 Mad., 483.

(6) (1908) I. L. R., 36 Cal., 659.

(7) Weekly Notes, 1887, p. 286.

(8) (1912) 9 A. L. J., 180.