

FULL BENCH.

1912
August 6.

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

DEBI PRASAD (DEPENDANT) v. BHAGWAN DIN AND OTHERS
(PLAINTIFFS).*

Expropriatory tenant—Sale by one of several co-owners holding sir land of his undivided zamindari share—Vendor expropriatory tenant of all the co-parceners and not merely of his vendees.

Where the owner of an undivided share in a *patti* sells his zamindari rights and becomes an expropriatory tenant of the *sir* land held by him he becomes the tenant as regards such land, not merely of his vendees but of all the co-sharers in the *patti*.

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

“The plaintiffs are the proprietors of a one anna share of *patti* Ram Dayal. The defendants 2 to 4 owned the remaining $3\frac{1}{4}$ annas share in the same *patti*. Their right to this share has been acquired by defendant No. 1, Debi Prasad. Defendants 2 to 4 were in possession of certain plots, some as *sir*, some as *khud-kasht*, and some for a period of less than twelve years. The plaintiffs in this suit sought for a declaration of their right to collect their proportionate share of the rent payable by defendants 2 to 4 on the lands in this *patti*. The courts below have decreed the plaintiffs' suit only in so far as the plots in the possession of the defendants 2 to 4 as non-occupancy tenants are concerned. The courts below are of opinion that the defendant Debi Prasad, who has acquired the proprietary rights of defendants 2 to 4, was alone entitled to collect the rent payable by defendants 2 to 4, on the land held by them as ex-proprietary tenants. The plaintiffs appealed and an objection also has been filed on behalf of the defendants. An issue was remitted by this Court to ascertain whether defendant No. 1, Debi Prasad, has collected the entire rent from defendants 2 to 4, hitherto, or whether the plaintiffs had been collecting their proportionate share of the rent payable by these tenants. The finding of the court below on this issue is that the plaintiffs have been collecting their proportionate share of rent due from defendants 2 to 4 direct. This finding is in favour of the plaintiffs appellants. The learned advocate who appears on behalf of the defendants supports the view taken by the court below and contends that his clients as purchasers of the rights of defendants 2 to 4 are entitled to collect the rent payable by these defendants on land held by them as ex-proprietary tenants to the exclusion of the plaintiffs. The right of the plaintiffs to a share in the profits is not denied. In my opinion this appeal must succeed. The *patti* is an undivided one. The defendant No. 1 acquired the proprietary rights of defendants 2 to 4. Thereupon defendants 2 to 4 became the ex-proprietary tenants of the

*Appeal No. 8 of 1912, under section 10 of the Letters Patent.

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entire body of co-sharers. No provision of law has been pointed out to me which confers on defendant No. 1 the exclusive right of collecting rent from defendants 2 to 4 in respect of land held by them as ex-proprietary tenants. No custom or contract to that effect has been pleaded. I allow this appeal, set aside the decree of the courts below and decree the suit for a declaration that the plaintiffs are entitled to recover rent from defendants 2 to 4 to the extent of their share in respect of all the lands in the occupation of defendants 2 to 4 as tenants. The plaintiffs shall obtain their costs throughout."

The defendants appealed.

The Hon'ble Dr. *Sundar Lal* and Pandit *Vishnu Ram Mehta*, for the appellants.

Munshi *Haribans Sahai* and Pandit *Uma Shankar Bajpai*, for the respondents.

RICHARDS, C. J. and BANERJI and TUDBALL JJ :—This appeal arises out of a suit in which the plaintiffs claimed a declaration that they were zamindars and owners of one anna out of a $4\frac{1}{2}$ anna share in each of the plots in dispute which were detailed in the plaint and are entitled to realize the rent from the defendants 2 to 4. The facts are—that one Ram Dayal owned a *patti* called Patti Ram Dayal, the extent of which was $4\frac{1}{2}$ annas of the mahal. After his death, in some way which it is unnecessary to consider, a one anna fractional share therein went to the plaintiffs and the remaining $3\frac{1}{2}$ annas went to the defendants 2 to 4. The rights of the defendants 2 to 4 have been acquired by defendant No. 1, the result of which was that defendants 2 to 4 became ex-proprietary tenants of the *sir* which they held prior to the acquisition of their proprietary rights by defendant No. 1. The real question is whether the defendants 2 to 4 are, in the events which have happened, the ex-proprietary tenants of the defendant No. 1 or the ex-proprietary tenants of all the proprietors in the *patti*, that is to say, of the plaintiffs and defendant No. 1. This was the question which came before a learned Judge of this Court, from whose judgement this appeal under the Letters Patent has been preferred. The learned Judge came to the conclusion that the defendants 2 to 4 were the ex-proprietary tenants of all the proprietors of the *patti*, and not of the defendant No. 1 alone. In our opinion this, in view of the circumstances of this case, is correct. It seems to us that prior to the sale all the co-sharers in the *pat'i* were the proprietors of all the plots that went to make up the *patti*, irrespective of the *sir*

rights of the several co-sharers. For the purpose of distribution of profits a hypothetical rent is in a case like the present fixed upon the *sir* land, and all the co-sharers share in this hypothetical rent. It is quite clear that if the proprietary body were the proprietors of the *sir* prior to the sale, the particular co-sharer who sells his proprietary rights cannot transfer anything more than his own share. In other words, he is not entitled to sell the whole proprietary title in the land which he held as *sir*. We think it logically follows that as soon as the co-sharer ceases to be a co-sharer and becomes an ex-proprietary tenant of his *sir*, he becomes the tenant of all the co-sharers in the *patti* including the purchaser of his share. The plaintiffs were therefore entitled to share in the rent payable by the defendants 2 to 4. It is to be noted that this is not a case where the vendor is really the sole owner of the proprietary title in the lands which he holds as *sir*. There are some such cases. We dismiss the appeal with costs.

Appeal dismissed.

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REVISIONAL CRIMINAL.

Before Mr. Justice Muhammad Rafiq.

LANGRIDGE v. ATKINS.*

Criminal Procedure Code, section 179—Jurisdiction—Place where consequence of act ensued—Act No. XLV of 1860 (Indian Penal Code), section 406—Criminal breach of trust.

Held that the loss caused to the person beneficially entitled to property through a criminal breach of trust is a consequence which completes the offence, and a prosecution will therefore lie at the place where such loss occurred.

Queen-Empress v. O'Brien (1) and *Emperor v. Mahadeo* (2) followed. *Babu Lal v. Ghansham Das* (3), *Ganesh Lal v. Nurd Kishore* (4) and *Sirdar Meru v. Jethabhai Amirbhai* (5) distinguished. *Nirbho Ram v. Kallu Ram* (6) dissented from.

The facts of this case were briefly as follows. Two persons of the names of Atkins and Langridge, both married, lived at Cawnpore. Atkins owned a machine and Langridge, under an agreement with Atkins, helped Atkins to work it and was remunerated by a share in the profits. Atkins fell ill at Cawnpore in 1911 and

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* Criminal Revision No. 681 of 1912 from an order of W. F. Kirton, Sessions Judge of Cawnpore, dated the 19th of August, 1912.

(1) (1896) I. L. R., 19 All., 111.

(4) (1912) I. L. R., 34 All., 487.

(2) (1910) I. L. R., 32 All., 377.

(5) (1906) 8 Bom. L. R., 513.

(3) Weekly Notes, 1908, p. 175.

(6) (1901) 4 O. C., 375.