

some other objections taken which need not be mentioned here. The learned Subordinate Judge disallowed all objections and allowed execution of the decree to proceed. Musammat Amina Bibi has come up in appeal to this Court and she repeats two of her objections to the execution of the decree. She contends that the application for execution is barred by limitation and that she is liable to the extent of $\frac{1}{4}$ th of her husband's debt because her share as a widow in the property is only $\frac{1}{4}$ th. We think that neither of the contentions of the appellant has any force. The limitation is saved by the application of the 24th of August, 1909. That a similar application has been held to be a step in aid of execution is borne out by the ruling in *Pitam Singh v. Tota Singh* (1). Her second objection also fails because she is in possession of the assets of her husband and she is liable to the extent of those assets to the creditors of her husband. Her allegation that she will have to account for the assets to the other heirs of her deceased husband is true, but she can always say that she had to pay so much for the satisfaction of the decree of her husband for which all the heirs were liable. The appeal fails and is dismissed with costs.

Appeal dismissed.

FULL BENCH.

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

GULZARI MAL AND ANOTHER (PLAINTIFFS) v. JAI RAM (DEFENDANT).
 Act (Local) No. II of 1901 (Agra Tenancy Act), section 194—Lambardar—
 Right of lambardar to eject tenants—Suit in ejectment—Other co-sharers not
 necessary parties.

Held that when a lambardar in a lambardari village sues to eject a tenant he is not bound to join the other co-sharers as parties.

Semle that section 194 of the Tenancy Act was not intended to apply to the case of a lambardari village. *Bishambhar Nath v. Bhallo* (2) distinguished.

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:—

* Appeal No. 97 of 1913 under section 10 of the Letters Patent.

(1) (1907) I. L. R., 29 All., 301.

(2) (1911) I. L. R., 34 All., 98.

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"This appeal arises out of a suit brought by the plaintiffs appellants to eject the defendant respondent, on the allegation that he was a non-occupancy tenant of the plots from which he was sought to be ejected. He resisted the suit on several grounds. He said that the plaintiffs appellants could not sue alone as the lands in respect of which ejection was sought were part of a joint khata and there were other co-sharers of that khata, including the defendant respondent himself. It was further urged in defence that the defendant respondent having become a co-sharer in the joint khata was not a mere non-occupancy tenant and could not be ejected. The court of first instance decreed the claim. On appeal, the learned District Judge held that the plaintiffs appellants could not sue alone in view of the provisions of section 194 of Act II of 1901. The plaintiffs have come up in second appeal to this Court. They contend that, as they are the lambardars of the mahal in which the defendant respondent is a tenant, they can sue to eject him, the provisions of section 194 of the Tenancy Act notwithstanding. In support of this contention reliance is placed on a ruling of the Board of Revenue of 1903. That was the case of *Dipa v. Udaï* (1), where the lambardars sued under Chapter X to resume a rent-free grant. The Board of Revenue held that such a suit was maintainable by lambardars and also made certain observations as to the general powers of a lambardar. Mr. Agarwala, in his commentary on the N.-W. P. Tenancy Act, discusses that ruling, at page 155, and shows that the view taken by the Board of Revenue is incorrect. I agree with the remarks of the learned author. It has not been shown by reference to any of the provisions of the N.-W. P. Tenancy Act, or of the Land Revenue Act, that a lambardar by the mere fact of being a lambardar can sue to eject a tenant without joining the other co-sharers, in a case in which the khata is joint. The case of *Bishambhar Nath v. Bhullo* (2) is also against the contention of the appellants. The appeal fails and is dismissed with costs."

Mr. *Nihal Chand* (with him Mr. *J. M. Banerji*), for the appellants :

There is a difference in cases where a lambardar⁶ sues a tenant and cases where he sues a co-sharer for rent due to himself and his co-sharers, from some of the co-sharers. The case relied on by the single Judge, *Bishambhar Nath v. Bhullo* (2), was a case of latter description and does not apply. The lambardar is a representative of the whole community. The Land Revenue Act, section 4 (3) defines 'lambardar' to be a representative of the whole proprietary body. Section 164 entitles a co-sharer to sue the lambardar for share of his profits and get a decree on the gross rental if any portion has not been collected through the negligence of the lambardar. This implies that the lambardar is entitled to sue tenants for rent and consequently to apply for

(1) (1903) Select Decisions, No. 6. (2) (1911) I. L. R., 34 All., 98.

their ejection, if need be. In any undivided khata he is the real landlord and can exercise the powers of distraint. Section 120 of the Agra Tenancy Act lays down that distraint cannot be made by any person unless he is entitled to collect the whole rent. All co-sharers need not join in such proceedings, but a lambardar is the person who can distrain. Section 57 of the Rent Act, 1882, also laid down the same law; *Ganga Sahai v. Ganga Bakhsh* (1). The Board of Revenue have held that the lambardar is the manager of the common lands, entitled to collect rents and do all necessary acts relating to the management of the estate for the common benefit; *Deepa v. Udai Ram* (2). The lambardar is nominated by the co-sharers under section 45 of the Land Revenue Act, and he represents the whole body. His acts are the acts of that body as he is the agent for them all. He has to pay the Government revenue and divide the profits between the share-holders. How can he divide the profits unless he realizes rents and profits?

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

The broad question is whether a lambardar can sue a tenant for ejection without joining all the co-sharers in the suit. The word lambardar is not defined in the Tenancy Act anywhere except in section 166. The word is used only in Chapter XI. Section 164 gives a co-sharer a right to bring a suit for profits against a lambardar. The lambardar does not represent the co-sharers for all purposes. He can do only what the Statute authorizes him to do. Even if he can collect rents, it does not follow that he can bring an action in ejection. Section 40 of the Tenancy Act speaks of a landholder bringing a suit for enhancement. There must be an agreement between the landholder and the lambardar. He is not entitled to collect rent otherwise than under the contract. Among the conditions recorded by a settlement officer in the *wajib-ul-arz* is also recorded an arrangement between the lambardar and co-sharer. I do not dispute that a lambardar can do certain acts for his co-sharers; but how does his duty to collect and pay rent arise? I submit that he can only do so when he is specially authorized by the co-sharers under an agreement to that effect, otherwise certain words in section 194

(1) Weekly Notes, 1890, p. 8.

(2) (1903) Select Decisions, No. 6.

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would be superfluous. Sections 58 and 63 both use the word landholder; *Pramadā Nath Roy v. Ramani Kanta Roy* (1).

RICHARDS, C. J., BANERJI and TUDBALL, JJ.—This appeal arises out of a suit brought by the lambardar against a tenant (purporting to be under the provisions of section 63 of the Tenancy Act) for ejectment. The court of first instance gave a decree. The lower appellate court held that the lambardar could not bring the suit without joining the other co-sharers and accordingly reversed the decree of the court of first instance. On second appeal to this Court a learned Judge took the same view as the lower appellate court and dismissed the appeal.

As the question is one of very considerable importance it has been fully argued before this Bench. The contention put forward on behalf of the respondent is as follows: That there are in this mahal a number of co-sharers, and that accordingly under the provisions of section 194 of the Tenancy Act, the suit cannot be maintained unless all the co-sharers join in the suit, and that the lambardar cannot be regarded as the agent appointed by them to act on their behalf. If this contention be sound, it would revolutionize the practice prevailing in lambardari villages in these provinces for generations. Indeed, the learned advocate for the respondent felt himself bound to admit that the argument must necessarily go so far as to contend that the lambardar could not even give a valid discharge for the rent payable by a tenant so as to bind the other co-sharers.

'Lambardar' in the Tenancy Act is declared to have the same meaning as in the Land Revenue Act. In the Land Revenue Act the expression is defined to mean "a co-sharer of a mahal appointed under this Act to represent all or any of the co-sharers in that mahal." In 'lambardari' villages in these provinces the duties of the lambardar are fairly well understood and recognized. Beyond all doubt he has the power of collecting rents. The following extract from a judgement of the Board of Revenue in our judgement fairly describes the position of the lambardar in a "lambardari" village:—"Speaking generally, the lambardar is the manager of the common lands entitled to collect the rents, settle tenants, eject tenants, procure enhancement of rents, and do

all necessary acts relating to the management of the estates for the common benefit."

It would be almost absurd to hold that the lambardar has power to collect the rents, and at the same time to hold that he had no power to enforce the collection. That he has power to collect rents is clearly shown by the provisions of section 164 which is as follows:—"A co-sharer may sue the lambardar for his share of the profits of the mahal or any part thereof. In such suit a court may award to the plaintiff not only the share of the profits actually collected but also of such sums as the plaintiff may prove to have remained uncollected owing to the negligence or misconduct of the defendant."

It will be seen from the provisions of this section that the lambardar is responsible to a co-sharer in a suit brought under the section for all rents which remained uncollected owing to his negligence. If the lambardar is entitled to collect the rents from the tenant, then he is a 'landholder' within the meaning of that expression in the Tenancy Act, and he accordingly would be entitled to bring a suit like the present.

We think that it is extremely improbable that section 194 was intended to apply to the case of a lambardari village. If, however, it does apply, in our opinion where the suit is brought by the lambardar in a lambardari village, strictly as lambardar, then the co-sharers must be deemed to have acted jointly through the person who is declared by law to be their representative.

Reliance has been placed upon the case of *Bishambhar Nath v. Bhullo* (1). That was a suit by the lambardar against a co-sharer for an excess of profits in which the other co-sharers were not joined for the profits payable to himself and other co-sharers. The case is not, therefore, similar to the present case, nor does it very clearly appear that the suit was a suit by the lambardar as such. We need express no opinion upon this case save to this extent that, if it was intended by the learned Judges to lay down as a matter of law that no suit can be brought by the lambardar in a lambardari village without joining all the other co-sharers, we cannot agree with the decision.

(1) (1911) I. L. R., 34 All., 96.

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The result is that we allow the appeal, set aside the decree of this Court and of the lower appellate court; and remand the case to the lower appellate court with directions to re-admit the appeal upon its original number in the file and to proceed to hear and determine the same according to law.

Appeal allowed and cause remanded.

APPELLATE CIVIL.

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May, 2.

Before Mr. Justice Muhammad Rafiq and Mr. Justice Piggott.

MATA PRASAD AND OTHERS (DEPENDANTS) v. RAM CHARAN SAHU AND OTHERS (PLAINTIFFS)*

Civil Procedure Code (1908), section 11.—Res judicata—Benamidar—First suit against defendant alleging herself to be merely a benamidar, but found in that suit to be the real owner—Second suit by persons alleging themselves to be the real owners.

A suit for sale on a mortgage was brought against the ostensible purchaser of the mortgaged property. She pleaded that she was not the real purchaser but was merely a benamidar for her three sons. The court, however, declined to accept this plea and gave a decree against the defendant upon the record as being the real purchaser. *Held* in a subsequent suit for possession of the same property brought by the sons that the previous decision did not operate as *res judicata* in respect of their claim.

Khub Chand v. Narain (1), Nand Kishore Lal v. Ahmad Ata (2), Yad Ram v. Unrao Singh (3), Kaniz Fatima v. Waliullah (4) and Gopinath Chaubey v. Bhagwat Prasad (5) referred to.

THE facts of this case were as follows :—Baijnath and Jagannath, two brothers, were members of a joint Hindu family. Baijnath obtained a simple money decree against one Ramjas Das on the 17th of June, 1878. In the year 1881 under a deed of partition between the brothers, Jagannath also got a half share in the said decree. Both the brothers applied for execution of the said decree, and in execution attached 16 annas of mauza Karma on the 20th of September, 1884. On the 27th of July, 1887, Ramjas Das executed a deed of simple mortgage in respect of an 8 anna share of mauza Karma to the defendants first party. In the meantime both Jagannath and Baijnath died; and on the

* First Appeal No. 205 of 1913, from an order of Srish Chandra Basu, Additional Judge of Gorakhpur, dated the 9th of August, 1913.

(1) (1881) I. L. R., 3 All., 812. (3) (1899) I. L. R., 21 All., 380.

(2) (1895) I. L. R., 18 All., 69. (4) (1907) I. L. R., 0 All., 30.

(5) (1884) I. L. R., 10 Calc., 697 (705).