

demands were sufficient in law. There is no special formula laid down by the Muhammadan law. There cannot be the least doubt that if the plaintiff made the demands, the vendee knew perfectly well to what property the demands related. We think under the circumstances of the present case that so long as the demands were made as deposed to by the plaintiff that they were sufficient to entitle him to maintain the present suit.

We accordingly allow the appeal, set aside the decree of the learned District Judge and restore the decree of the court of first instance with costs in all courts.

*Appeal allowed.*

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January, 11.

*Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Tudball.*  
BISHESHAR AHIR (PLAINTIFF) v. DUKHARAN AHIR (DEFENDANT).  
Act (Local) No. II of 1901 (Agra Tenancy Act), section 22—Occupancy holding  
—Hindu female in possession as such of occupancy holding—Succession.

There is nothing in the Agra Tenancy Act to enlarge the estate in an occupancy holding of a Hindu female in possession at the time the Act of 1901 was passed, beyond the ordinary estate of a Hindu female. The Act not having provided for the devolution of the interest in an occupancy holding where it was, at the passing of the Act, in the possession of a Hindu female as such, the rights of the parties claiming such holding on the death of the last female occupant must be ascertained according to the ordinary Hindu Law.

THIS was an appeal under section 10 of the Letter 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 dispute between the parties to this appeal relates to the succession to an occupancy holding. It appears that one Katwaru originally held the land in suit as occupancy tenant. He died more than twenty-four years ago, leaving him surviving two daughters, namely Musammat Dilasi and Musammat Sumitra. Musammat Dilasi died about fourteen years ago, and Musammat Sumitra on the 11th of September, 1913. The defendant appellant is the son of Musammat Sumitra. The plaintiffs are the son and grandson of Musammat Dilasi. They instituted the suit out of which this appeal has arisen in the court of the Additional Munsif of Azamgarh for the recovery of joint possession over this occupancy holding. They alleged that they were entitled to one-half of the holding as they were descended from Musammat Dilasi one of the daughters of Katwaru. The principal plea in defence was that the provisions of Act II of 1901 relating to succession to an occupancy holding barred the

\* Appeal No. 60 of 1915, under section 10 of the Letters Patent.

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claim. The learned Munsif decreed the claim in favour of plaintiff No. 1 but dismissed the claim of plaintiff No. 2. The decree of the learned Munsif was upheld by the lower appellate court. Both the courts proceeded on the ruling in the case of *Dulari v. Mul Chand* (1). In appeal to this Court it is contended that the present case is distinguishable from the case relied upon by the lower courts inasmuch as the right of succession accrued to Bisheshar the successful plaintiff, after the passing of Act II of 1901. Under the said Act a daughter's son can only succeed if he has been joint in the cultivation of the holding with his maternal grand-father at the time of the latter's death. Bisheshar did not base his claim on the allegation that he was joint in cultivation with his maternal grand-father. He based his claim on the Hindu Law of succession and he cannot therefore succeed in his claim. In support of this contention the learned counsel for the appellant relies upon the case of *Musammatt Sumari v. Jageshar* (2). For the plaintiff respondent the contention is that he had acquired some interest in the succession to his maternal grandfather at the time of the latter's death because he could have questioned an alienation by his mother or his aunt or both if any had been made. As he had acquired an interest in the succession prior to the passing of Act II of 1901 the provisions of that Act do not apply to him. I think that this appeal must prevail. This plaintiff respondent acquired his right to succeed on the death of his aunt Musammatt Sumitra on the 11th of September, 1913, that is, after the passing of Act II of 1901. The right of the plaintiff-respndent to question an alienation if any made by his mother or his aunt is not the same thing as a right of succession. The claim of the plaintiff respondent must therefore fail in view of the provisions of section 22 of Act II of 1901. The same provisions of course would defeat the title of the defendant appellant also if the zamindar chose to enforce them against him, but that is not at present the question for determination. I allow the appeal, reverse the decree of both the courts below and dismiss the claim of the plaintiff respondent with costs in all courts."

The plaintiff no. 1 appealed.

Maulvi *Iqbal Ahmad*, for the appellant :—

As Katwaru died while the old Act was in force, the succession to his tenancy would not be governed by Act II of 1901. The plaintiff is claiming to succeed to Katwaru's tenancy and therefore he would not be subject to the present law. The daughters only took a life interest and were never full occupancy tenants. The ruling relied on by the learned Judge of this Court has not been followed in later Division Bench rulings; *Deoki Rai v. Musammatt Parbati* (3) *Nathu v. Gokalia* (4) and *Sital Prasad v. Bishan Dat* (5).

(1) (1910) I. L. R., 32 All., 314.

(3) (1914) 23 Indian Cases, 100.

(2) (1913) 20 Indian Cases.

(4) (1915) I. L. R., 37 All., 658.

(5) (1915) 30 Indian Cases 804.

Babu *Piari Lal Banerji*, for the respondent :—

Musammatt Sumitra was an occupancy tenant within the meaning of that expression as used in the Tenancy Act. She had cultivated the land for more than 12 years and was entitled to the status of an occupancy tenant in her own right. The defendant, as her son, was a male lineal descendant and the plaintiff as sister's son could not succeed according to section 22. The fact that Musammatt Sumitra originally entered as a Hindu daughter with a Hindu female's estate, would not prevent her from acquiring occupancy rights herself. Again, a Hindu female succeeding to an occupancy tenancy takes the entire estate. There is no outstanding interest left in anybody and she would therefore appropriately be described as an occupancy tenant within the meaning of section 22; *Babu Bansidhar v. Musammatt Rajwantia* (1). On the question of the nature of the estate taken by a Hindu female, see *Vasonji Murarji v. Chanda Bibi* (2). If, however, Sumitra could not be regarded as the occupancy tenant and the plaintiff was entitled to claim through Katwaru, he would have to satisfy the condition of sharing in the cultivation with him. After the passing of Act II of 1901, no title by inheritance to an occupancy holding can be made out otherwise than under section 22, unless the title was acquired before the passing of the Act, as the Act does not affect vested rights acquired before the Act was passed; *Dulari v. Mul Chand* (3). In the present case the plaintiff acquired his right, if any, in 1913 and consequently he is governed by section 22. It is not possible to have two rules of devolution to occupancy tenancies, viz. one laid down in section 22, and the other the ordinary rule of the Hindu Law of succession.

Maulvi *Iqbal Ahmad*, was not heard in reply.

RICHARDS, C. J., and TUDBALL, J. :—This appeal relates to a suit in which the plaintiff claimed a half share in an occupancy holding. The facts are very simple and are undisputed. Katwaru was the tenant of the occupancy holding. He died many years ago before the Agra Tenancy Act came into force, leaving two

(1) (1907) Select Decisions of Board of Revenue No. 3. (2) (1915) I. L. R., 37 All., 658.

Revenue No. 3.

(3) (1910) I. L. R., 32 All., 314.

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daughters, Musammat Dilasi and Musammat Sumitra. Musammat Dilasi died about 14 years before the suit was instituted, leaving her surviving, her sister Musammat Sumitra, who died on the 11th of September, 1913. The plaintiffs are the son and grandson of Musammat Dilasi and the defendant is the son of Musammat Sumitra. It is admitted that on the death of Katwaru his two daughters became entitled to possession of the property as Hindu females. According to the provisions of the Rent Act of 1881 an occupancy holding, subject to certain qualifications, descended "as land." It is admitted that if the Agra Tenancy Act had never been passed, the plaintiff No. 1 would be entitled to succeed in the present suit. Section 22 of the Agra Tenancy Act provides that when an occupancy tenant dies his interest shall devolve as therein provided. If we regard Musammat Sumitra as *the occupancy tenant* within the meaning of section 22 of the Tenancy Act the plaintiff's title fails. It seems to us that we cannot regard Musammat Sumitra as the full occupancy tenant. When she and her sister succeeded they succeeded merely as Hindu ladies. There is nothing in the Agra Tenancy Act which enlarges the estate of a Hindu female in an occupancy holding in possession at the time the Act was passed beyond the ordinary estate of a Hindu female. If the Act has not provided for the devolution of the interest in an occupancy holding, where it was, at the passing of the Act, in the possession of a Hindu female as such, we think that we ought to go to the ordinary Hindu law to ascertain the rights of the parties. There has no doubt been some conflict of views upon the point. The important matter is to have a definite ruling one way or the other. The cases, as time goes on, in which the question will arise, must become fewer and fewer. It is said that the Board of Revenue have taken a decided view that a female Hindu is the full occupancy tenant within the meaning of section 22 and the case of *Babu Bansidhar v. Musammat Rajwantia* (1) is relied upon. In that case no doubt the view contended for seems to have been taken and the members of the Board seem to have considered that upon the death of a Hindu widow all occupancy rights ceased to exist and were extinguished. In another case

(1) (1907) Select Decisions of Board of Revenue, No. 3.

before the Board of Revenue, *Sital Prasad v. Bishan Dat* (1), quite a contrary view appears to have been taken by the Board. This case was decided on the 22nd day of August, 1912. In that case one Rahman had been the occupancy tenant. On his death prior to the passing of the present Agra Tenancy Act his widow Musammat Naraia became entitled to possession. She died after the new Act came into force leaving two daughters and a daughter's son. The Senior Member of the Board of Revenue stated in the clearest way possible that upon the death of the widow, who had only been in possession for her life, her daughters became entitled and were then the occupancy tenants. On behalf of the appellants the following cases were relied upon:—*Deolki Rai v. Musammat Parbati* (2), *Nathu v. Gokalia* (3), *Dulari v. Mul Chand* (4). The two first mentioned cases are no doubt clearly distinguishable, and the question which we have to decide in the present case was not decided. In *Dulari v. Mul Chand*, there was the distinction which has been pointed out by the learned Judge of this Court that the plaintiff's right had already accrued to her before the present Act came into operation and her rights were only postponed by reason of the fact that she was rich while her sister poor. We think that the decisions of the courts below were correct and ought to be restored. We accordingly allow the appeal, set aside the decree of this Court and restore the decree of the lower appellate court and we direct that the parties do pay their own costs in this Court.

*Appeal allowed.*

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

MUHAMMAD KHALIL (PLAINTIFF) v. MUHAMMAD IBRAHIM  
(DEFENDANT).\*

*Pre-emption—Muhammadian Law—Talab-i-ishtishhad.*

*Held* that a Muhammadian pre-emptor cannot validly make the *talab-i-ishtishhad* by letter when he is in a position to do so in person.

\* Second Appeal No. 692 of 1914, from a decree of D. Dewar, District Judge of Saharanpur, dated the 14th of February, 1914, reversing a decree of Piri Lal, Munsif of Saharanpur, dated the 18th of May, 1912.

(1) (1915) 30 Indian Cases, 804. (3) (1915) I. L. R., 37 All., 658.

(2) (1914) 30 Indian Cases 804. (4) (1910) I. L. R., 32 All., 314.

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