

1919  
 EMPEROR  
 v.  
 PARWARI,

probability of meeting him at the railway station. The improbability is so great that it amounts to my mind to an impossibility. Her intention was not to cause pain to the relatives of the deceased, but to get herself, if she could, out of the scrape into which she had come by going about in male attire with a large amount of jewellery. In any case I cannot hold that the intention has been proved; her statements therefore do not amount to defamation. The offence of defamation of which she has been convicted has not been established. I find her not guilty and direct her immediate release from custody; if on bail, as I understand she is, she should be instantly released and the bail bonds cancelled.

*Application allowed.*

## APPELLATE CIVIL

1919  
 January, 4.

*Before Sir Henry Richards, Knight, Chief Justice, and Justice*

*Sir Pramada Charan Banerji.*

BHARAT INDU AND OTHERS (PLAINTIFFS) v SYED MUHAMMAD MUSTAFA KHAN (DEFENDANT)\*

*Lambardar and co-sharer - Suit for profits - Lambardar appointed after some of the rent in respect of which the suit was brought had become due—Liability of lambardar.*

A lambardar is not exempted from liability in respect of rents merely because they may have become due on a date prior to his appointment as lambardar; but he would be liable to account for such rents if he had either actually received them or had obtained decrees for them.

THIS was a suit for profits against a lambardar. The share in respect of which the claim was made was purchased by the plaintiffs on the 22nd of January, 1912. The defendant was appointed lambardar on the 5th of February, 1913. The court of first instance decreed the greater part of the plaintiff's claim, but dismissed it in respect of a portion of the rent, which had fallen due before the date of the defendant's appointment as lambardar, and this decree was upheld in appeal by the Officiating District Judge. The plaintiffs appealed to the High Court in respect of such portion of their claim as had been disallowed by the court below.

---

\*Second Appeal No. 102 of 1917, from a decree of Rama Das, Officiating District Judge of Farrukhabad, dated the 26th of September, 1916, confirming a decree of Ram Narain, Assistant Collector, First Class, of Farrukhabad, dated the 27th of June, 1916.

Dr. *Surendra Nath Sen*, for the appellants.

Dr. *S. M. Sulaiman*, for the respondent.

RICHARDS, C. J., and BANERJI, J. :—This appeal is connected with Second Appeals Nos. 103 and 104 of 1917. They arise out of suits for profits brought against the lambardar. It appears that the plaintiffs purchased a certain share on the 22nd of January, 1912, and that under their purchase they were entitled to arrears of profits. The defendant was appointed lambardar on the 5th of February, 1913. The plaintiffs claim profits for *kharif* of 1320 and *rabi* and *kharif* in subsequent years. The court of first instance granted the plaintiff a decree in respect of *kharif* of 1320. The plaintiffs appealed and contended that the expenses allowed by the first court were too great and that the percentage on the gross rental allowed to them was too little. They also contended that they ought to have got a decree in respect of the *kharif* of 1320. The lower appellate court upheld the decision of the court of first instance on all points and dismissed the appeals. We may say at once that we agree with the courts below save in so far as they dismissed the plaintiffs' claim in respect of the *kharif* of 1320. The ground upon which both the courts dismissed the plaintiffs' claim in respect of *kharif* of 1320 was because the defendant had not been appointed lambardar when the rents of *kharif* 1320 fell due. This view is, in our opinion, not correct. If the defendant after he had become lambardar collected the rents for *kharif* 1320 he would be liable to the plaintiffs notwithstanding that he had not been appointed lambardar when the rents actually fell due. If he had actually realized the rents he would be liable for the amount so realized. If he had only recovered decrees he would be liable for the amount realized under those decrees or for the ascertained value of the decrees. Before deciding the appeals we refer the following issues to the court below.

(1) Did the defendant realize any sums, and if so, how much, in respect of *kharif* 1320? Were these sums realized after he had been appointed lambardar?

(2) Did the defendant obtain decrees after he had become lambardar in respect of *kharif* 1320? If so, how much has been

1919

---

BEHARAT  
INDU  
v.  
SYED MU-  
HAMMAD  
MUSTAFA  
KHAN.

1919

BHARAT  
 INDU  
 v.  
 SYED MU-  
 HAMMAD  
 MUSTAFA  
 KHAN.

realized on foot of these decrees or might by reasonable diligence have been realized ?

(3) As the result of the findings on these issues, how much, if any thing, is due to the plaintiffs in respect of their shares of the *khariif* of 1320 ?

The parties may adduce evidence relevant to these issues. On receipt of the findings the usual ten days will be allowed for filing objections.

*Issues remitted.*

1919  
 January, 4.

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

KAREHRU AND ANOTHER (DEFENDANTS) v. MATHURA PRASAD (PLAINTIFF) \*  
 Act (Local) No. II of 1901 (*Agra Tenancy Act*), sections 154 and 177—*Suit for resumption of rent-free land—Question of proprietary title in issue—Civil and Revenue Courts—Jurisdiction.*

In a suit for resumption of rent-free land under section 154 of the Agra Tenancy Act, the defence was that the land was not resumable and that it had been held rent-free for fifty years and by two successors to the original grantee. The court of first instance (Assistant Collector), holding that the land was resumable, passed a decree for ejectment. The defendants appealed to the Commissioner before whom it was pleaded, *inter alia*, that the lower court should have proceeded under section 158 of the Tenancy Act, but it did not appear that any finding was arrived at, or any evidence given or arguments addressed upon this question before the Commissioner. *Held* that in the circumstances it did not appear that a question of proprietary title was in issue in the court of first instance and also in the court of appeal so as to give appellate jurisdiction to the Civil Court and oust the jurisdiction of the Courts of Revenue.

THE facts of the case are briefly as follows :—

The respondent zamindar sued the appellant under section 154 of the Agra Tenancy Act for ejectment from a rent-free holding. The defendants, *inter alia*, pleaded that the land was not resumable, as it had been given for charitable purposes, and that they had acquired proprietary rights by holding the land for two generations and for more than fifty years. The Assistant Collector decreed the suit, and the decree was confirmed by the Commissioner in appeal. The Board of Revenue, in revision, however, held that the land was not resumable and remanded the

\*Second Appeal No. 210 of 1917, from a decree of D. R. Lyle, District Judge of Agra, dated the 12th of December, 1916, reversing a decree of Salig Ram Pathak, Assistant Collector, First class, of Muttra, dated the 21st of June, 1916.