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ABDUL LATIF
KHAN
v.
OBED-ULLAH
KHAN.

See, generally, Wilson's Digest of Anglo-Muhammadan law, 3rd edition, page 343.

In the present case we must follow the opinions of Abu Yusuf and Muhammad.

The facts as found by the learned Subordinate Judge are that Abdul Latif Khan did intend to create a valid waqf, and did intend to make a genuine dedication. He declared the property to be waqf, he appointed a mutawalli (i.e. himself) and as he himself was the mutawalli there was no need of formal transfer of possession. After the death of Abdul Latif Khan, Abdul Ghafur Khan, in pursuance of the terms of the deed of waqf, appointed Obed-ullah Khan as mutawalli and the latter accepted the appointment and took possession. His subsequent conduct would not in our opinion invalidate the waqf.

In these circumstances we think that the learned Subordinate Judge was wrong in restoring the plaintiffs to possession of so much of the property as was covered by the waqf and his decision on this point must be set aside.

The result, therefore, is that we dismiss the plaintiffs' appeal and allow the cross-objections of the defendant and declare that the plaintiffs are not entitled to possession of that part of the property covered by the deed of waqf. The appeal is dismissed with costs, and the cross-objections allowed with costs.

Appeal dismissed.

Cross-objections allowed.

Before Mr. Justice Tudball and Mr. Justice Muhammad Rafiq.

RADHA MADHO LALJI (PLAINTIFF) v. RAM SEWAK AND ANOTHER
(DEFENDANTS).*

Act (Local) No. III of 1901 (United Provinces Land Revenue Act), sections 56 and 86—Cess—"Gaon kharch"—Civil and Revenue Courts—Jurisdiction.

In a permanently settled portion of the Mirzapur district the tenants were in the habit of paying to their zamindars an addition to their rent of 3 to 4 pies per rupee under the name of *gaon kharch*. This additional payment, however, was not recorded under section 56 or section 86 of the United Provinces Land Revenue Act, and it did not appear from the evidence that it could be regarded as part and parcel of the contract of rent.

* Second Appeal No. 597 of 1918 from a decree of F. D. Simpson, District Judge of Allahabad, dated the 9th of February, 1918, modifying a decree of Anrudh Lal Mahendra, Assistant Collector, first class, of Mirzapur, dated the 14th of August, 1916.

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Held that, whether or not a suit might lie in a Civil Court for the recovery of the payment known as *gaon kharch*, no such suit would lie in a Court of Revenue.

THE facts of this case sufficiently appear from the judgment of the Court.

Munshi *Budri Narain*, for the appellant.

Munshi *Nawal Kishore*, for the respondents.

TUDBALL and MUHAMMAD RAFIQ, JJ.:—This appeal arises out of a suit for rent and the dispute before us relates to what is known in the case as *gaon kharch*. The parties to this appeal are the zamindar and certain agricultural tenants. The plaintiff, who is the appellant before us, brought a suit in the Revenue Court seeking to recover arrears of rent from the defendants on account of their holdings of cultivatory land. In his statement of account the plaintiff put down the rent of the land at a certain figure and added to that amount another figure under the head of village expenses, which is sometimes calculated at the rate of three pies and sometimes at the rate of four pies a rupee on the rental of the land. There was also a claim for acreage cess with which we are not concerned in this appeal. The court of first instance gave the plaintiff a decree for rent and also for the *gaon kharch*. On appeal, the learned District Judge has held that it has not been established before him that the *gaon kharch* is in fact part of the contract of rent. He found that the *gaon kharch* was a cess. It was, therefore, not recoverable in the Revenue Court. In addition to this he also held that sections 56 and 86 of the Land Revenue Act applied and as there had been no record made by any Settlement Officer, therefore the cess was not recoverable. The villages in question lie in pargana Saktishgarh in the district of Mirzapur and are under permanent settlement. It is an admitted fact that no settlement record has been drawn up by any Settlement Officer nor has any record officer ever been deputed by Government to draw up the record of rights. The result is that sections 56 and 86 of the Land Revenue Act do not operate or apply to the present village. It is urged before us that the evidence on the record clearly establishes the fact that the tenants of this village have for the last forty-five or fifty years been regularly paying this *gaon kharch* and that this fact clearly establishes that it was part of the contract of rent that they

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should pay this item. Attention has been called to the entry of rent in the patwari's record. Against each field of the tenants a rent is entered and under the total of these rents there is entered a figure for *gaon kharch*. The record, in our opinion, does not establish the fact that the *gaon kharch* was part and parcel of the contract of rent. It may be a customary due which residents of the village have been paying, but as far as we can judge, it is not part and parcel of the contract of rent and as such is not recoverable in the Revenue Court. We express no opinion as to whether or not it is recoverable in a Civil Court, but certainly it is no part and parcel of the contract of rent, and is not recoverable as rent in the Revenue Court. In this view, the appeal must fail and we dismiss it with costs.

Appeal dismissed.

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Before Mr. Justice Ryves and Mr. Justice Gokul Prasad.

SAIYID AHMAD BEG AND ANOTHER (PLAINTIFFS) v. DHARMUN RAI AND OTHERS (DEFENDANTS).*

Act No. IV of 1882 (Transfer of Property Act), section 83—Redemption of mortgage—Money payable on last day of Jeth—Deposit in court on last day of Jeth—Notice served on mortgagors after month of Jeth—Effect of such deposit.

A deed of usufructuary mortgage provided that, if the mortgagor wished to redeem the mortgage, he could do so on the last day of Jeth in any year. The mortgagor filed a suit for redemption and paid the mortgage money into court on the last day of Jeth, 1910.

Held that it was no reason for dismissing the suit that notice could not be given to the mortgagor within the time limited. Even if the tender was not enough to warrant the court in passing a decree for redemption from the date of the deposit, it was certainly proper and legal for the court to pass a decree from the last day of Jeth next succeeding the date of the deposit. *Het Singh v. Bihari Lal* (1) referred to.

THE facts of this case are fully set forth in the judgment of the Court.

Dr. S. M. Sulaiman, Maulvi Iqbal Ahmad and Maulvi Mukhtar Ahmad, for the appellants.

Mr. M. L. Agarwala, for the respondents.

* Second Appeal No. 1351 of 1917, from a decree of Sudershan Dayal, Additional Subordinate Judge of Ghazipur, dated the 24th of July, 1917, reversing a decree of Aijaz Husain, Munsif of Muhammadabad, dated the 18th of March, 1916.