

1922
 NIZAM-UD-
 DYN KHAN
 v.
 MUHAMMAD
 ZIA-UL-NABI
 KHAN.

ground that the bonds are no longer necessary. This case was followed in another case, that of *Emperor v. Shankar Lal* (1). I agree with this interpretation of section 125 of the Criminal Procedure Code. It appears to me that the only ground on which a District Magistrate can cancel a bond for keeping the peace or to be of good behaviour is that something has supervened since the date of the first court's order which satisfies the District Magistrate that in view of the facts since come to light there is no longer any necessity for keeping the accused person under bond. I do not think section 125 can be used by a District Magistrate as if he were sitting as a court of appeal or that he is justified in passing an order under the section merely because he takes a different view of the evidence which has been submitted to the court of first instance. If he thinks that the order of the first court is not maintainable on the evidence as presented, his duty is not to pass an order under section 125 but to refer the case to the High Court on its revisional side. I, therefore, set aside the order of the Officiating District Magistrate dated the 24th and restore the order of the Assistant Magistrate which bears the date 17th of September, 1921.

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 May, 4.

Before Mr. Justice Lindsay and Mr. Justice Gokul Prasad.

SHEO NARAIN (PLAINTIFF) v. BALA RAO (DEFENDANT).*

Act (Local) No. II of 1901 (Agra Tenancy Act), section 201 (3)—Suit for profits—Presumption—Joint Hindu family.

The presumption of law provided for by section 201 (3) of the Agra Tenancy Act, 1901, is none the less applicable because the parties to a suit for profits may be members of a joint Hindu family.

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

Munshi *Haribans Sahai*, for the appellant.

Pandit *Uma Shankar Bajpai*, for the respondent.

LINDSAY and GOKUL PRASAD, JJ. :—This appeal and the connected second appeal No. 24 of 1921 arise out of suits for profits brought by the plaintiff appellant against his brother, lambardar, defendant. The suits were for profits of two mahals for the years 1923, 1924 and 1925. The defendant pleaded in answer that he and his brother were members of a joint Hindu family and that such a suit was not maintainable.

* Second Appeal No. 23 of 1921, from a decree of H. J. Bell, District Judge of Jhansi, dated the 4th of June, 1920, modifying a decree of Thakur Phul Singh, Assistant Collector, first class, of Orai, dated the 12th of January, 1920.

The first court came to the conclusion that the parties were divided in status, and decreed the claim of the plaintiff in part for the periods in suit.

On appeal the learned Judge has come to the conclusion that the parties were joint in the year 1323 Fasli and has dismissed the claim for profits for that year. The names of the parties to the suit are entered on a moiety share in each of the two mahals and having regard to the view taken of section 201 (3) of the Tenancy Act by this Court, the claim of the plaintiff, whose name was entered on a moiety of the property, ought to have been decreed. All that the learned Judge says about this aspect of the case is that "the irrebuttable presumption of section 201(3) of the Tenancy Act ordinarily applicable under the decision of I. L. R., 32 All., 779, does not apply"; or, in other words, he seems to think that such a presumption is not to be applied in the case of a joint Hindu family. But he forgets that all that this presumption results in is to prevent persons from pleading that the family is a joint Hindu family as against the entries in the khewat. So far as the Revenue Courts are concerned these entries are deemed to be true records for the purposes of suits under Chapter 11 of the said Act.

In our opinion the decree of the lower appellate court is based on a misapprehension of the effect of section 201 of the Tenancy Act. In our view the decree of the first court was correct and has been wrongly interfered with. We therefore allow the appeal, set aside the decree of the lower appellate court and restore that of the court of first instance with costs in all courts.

Appeal allowed.

Before Mr. Justice Lindsay and Mr. Justice Gokul Prasad.

MUHAMMAD FATIMA (DEFENDANT) v. MUHAMMAD MASHUQ ALI
AND ANOTHER (PLAINTIFFS).*

Act No. III of 1907 (Provincial Insolvency Act), section 16 (2)—*Insolvency—Vesting of property in receiver—Suit by receiver for declaration of title.*

All property such as may be acquired by or have devolved on the insolvent after passing of an order of adjudication and before his discharge, forthwith vests in the court or receiver and becomes divisible amongst the creditors in accordance with the provisions of sub-section (2), clause (a), of section 16 of the Provincial Insolvency Act. The receiver is entitled to sue for a declaration of title simply and need not claim actual possession.

* Second Appeal No. 1624 of 1920, from a decree of V. E. G. Hussey, District Judge of Moradabad, dated the 19th of May, 1920, confirming a decree of Lalita Prasad Johri, Subordinate Judge of Moradabad, dated the 19th of January, 1920.

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