

tor, according to the ordinary scale in civil cases. The counsel for the official liquidators asks that they may be given special remuneration for the labour performed by them in sifting this claim out of court. I am of the opinion that *prima facie* this remuneration cannot be required to be paid by Mr. Panna Lal. I am told that there are instances where this has been done, but, in the absence of authority or proof of practice, I am unable to decree such remuneration as costs. It appears to me that it would be opening a very wide question if costs could be obtained by the official liquidators in respect of out of court proceedings. I make no order, therefore, as to this remuneration, but the official liquidators can apply in the ordinary way for special remuneration from the company's assets.

1927

IN THE  
MATTER OF  
THE  
DEBRA DUN-  
MUSSOORIE  
ELECTRIC  
TRAMWAY  
COMPANY,  
LIMITED.

*Objection disallowed.*

## APPELLATE CIVIL.

*Before Mr. Justice Lindsay and Mr. Justice Sulaiman.*

KESAR KUAR (DEFENDANT) *v.* KALLU RAM (PLAINTIFF).\*

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November,  
25.

*Zamindar and tenant—Co-parcenary mahal—Position of a co-parcener not incompatible with that of a tenant.*

There is nothing in law to prevent a co-sharer in a co-parcenary mahal from having tenant rights of any kind and being liable to the payment of rent either to another co-sharer or to the general body of co-sharers, and if a tenant subsequently acquires proprietary rights in the land, his tenancy does not automatically come to an end in its entirety. *Mahabir Singh v. Ahsanullah* (1), *Abul Hasan Khan v. Bhura* (2), and *Jamna Prasad Rai v. Damri* (3), followed.

\*Second Appeal No. 481 of 1926, from a decree of E. Bennet, District Judge of Agra, dated the 25th of November, 1925, reversing a decree of Irfan Ali Beg, Assistant Collector, First Class of Agra, dated the 8th of September, 1921.

(1) Weekly Notes, 1901, p. 53.

(2) Weekly Notes, 1906 p. 226.

(3) (1914) Vol. I, Unpublished Decisions of the Board of Revenue, p. 77.

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

Dr. *Kailas Nath Katju* and *Munshi Benod Behari Lal*, for the appellant.

*Munshi Kamla Kant Varma*, for the respondent.

LINDSAY and SULAIMAN, JJ. :—This is a defendant's appeal arising out of a suit for arrears of rent brought by *Kallu Ram* against *Musammat Kesar Kuar*. The suit was dismissed by the Assistant Collector, but on appeal it was decreed by the District Judge. His findings on some of the points were not clear. Accordingly, a former Bench of this Court framed three issues and remanded the case with directions that the learned Judge should dispose of the case on the lines indicated by the issues.

The learned District Judge has upheld his former decree.

The plots in dispute were recorded as the tenancy of one *Sri Ram* and, on his death, were recorded in the name of his widow, *Musammat Kesar Kuar*. *Kallu Ram* was recorded as the lambardar and the proprietor of the mahal in which these plots are situated. In 1917 there was a dispute between the parties in the civil court and the matter was referred to the arbitration of three arbitrators and an award was pronounced on the 31st of May, 1918, followed by a decree of the civil court. Under this decree *Musammat Kesar Kuar* was given a half share in the proprietary interest in the mahal.

The learned District Judge has found, and his finding is one of fact, that the defendant has failed to prove that she had any proprietary interest in the mahal prior to the award of 1918. She must, therefore, be treated as a tenant of the plots prior to that date. Since then, however, she has become a co-sharer entitled to an equal share with *Kallu Ram* in the proprietary interest in the mahal.

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The learned District Judge has given the plaintiff a decree for half the amount of rent due on account of these plots, holding that the tenancy to the extent of one-half has become merged in the proprietary interest acquired by Musammatt Kesar Kuar since the award.

The point which has been urged before us on behalf of the appellant is that having become a proprietor in the mahal she has ceased to be a tenant, and the only remedy now open to the plaintiff is a suit for profits in which the rent could be taken into account and adjusted. It is further urged that a person cannot both be a zamindar and a tenant in one and the same mahal. But there cannot be a complete merger of two rights unless the two are co-extensive. We are of opinion that this point is concluded by a series of authorities, which it is not now possible to disturb. We may refer to the case of *Mahabir Singh v. Ahsanullah* (1), followed subsequently in S.A. No. 303 of 1918, decided on the 28th of February, 1918, and *Abul Hasan Khan v. Bhura* (2). We may also mention that the Board of Revenue has accepted the same principle, as shown by the case of *Jamna Prasad Rai v. Damri* (3). All these cases are authorities for the proposition that there is nothing in law to prevent a co-sharer in a coparcenary mahal from having tenant rights of any kind and being liable to the payment of rent either to another co-sharer or to the general body of co-sharers, and that if a tenant subsequently acquires proprietary rights in the land his tenancy does not automatically come to an end in its entirety.

In view of these authorities we are of opinion that this appeal must be dismissed.

The result, therefore, is that this appeal is dismissed with costs.

*Appeal dismissed.*

(1) Weekly Notes, 1901, p. 53.

(2) Weekly Notes, 1906, p. 226.

(3) (1914) Vol. I, Unpublished Decisions of the Board of Revenue, p. 77.