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IN THE MATTER OF SHIB LAL, GANGA RAM.

the Government Advocate at Rs. 100. Any amount deposited by the assessee will be returned to him.

Reference answered in the negative.

Before Mr. Justice Boys and Mr. Justice Kendall.

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May, 9.

HAIDARI BEGAM AND OTHERS (DEFENDANTS) *v.* SRIMAN THAKUR LAKSHMI NARAINJI MAHARAJ (PLAINTIFF) AND MUSAMMAT SUNDAR AND OTHERS (DEFENDANTS).*

Act (Local) No. II of 1901 *(Agra Tenancy Act), sections* 164 (2), 165 *and* 166—*Lambardar and co-sharer—Liability of representative of deceased lambardar for the negligence or misconduct of his predecessor.*

A plaintiff can, in a suit against the lambardar, prove negligence or misconduct with a view to getting a decree against the lambardar personally or, in a suit against a holder of the assets of the lambardar, can prove the negligence or misconduct of the deceased lambardar in order to get a decree against the estate of the deceased lambardar in the hands of such holder.

The words " plaintiff " and " defendant " as used in sub-section (2) of section 164 are merely synonyms for the " co-sharer " and " lambardar " referred to in sub-section (1), just as they are used in section 165. *Dip Singh* v. *Ram Charan* (1), and *Bharat Singh* v. *Tej Singh* (2), referred to.

THE facts of this case, so far as they are necessary for the purposes of this report, appear from the judgement of the Court.

Maulvi *Muhammad Abdul Aziz*, for the appellants.

Dr. *M. L. Agarwala*, for the respondents.

BOYS and KENDALL, JJ.—This is a suit under section 164 of the Tenancy Act for profits by a co-sharer against the heirs of a lambardar. It has been found not merely that there were no reliable accounts of actual

* Second Appeal No. 731 of 1925, from a decree of R. L. Yorke, District Judge of Bulandshahr, dated the 27th of February, 1925, reversing a decree of A. Shakur, Assistant Collector, first class of Bulandshahr, dated the 22nd of September, 1923.

(1) (1906) I.L.R., 29 All., 15. (2) (1917) I.L.R., 40 All., 246.

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collections, but affirmatively that the accounts furnished by the defendants are false and misleading; and the lower appellate court has therefore given the plaintiff a decree based on the full amount of the jamabandi. This decree has not been limited to the assets of the deceased lambardar which may have come into the hands of the defendants as his heirs. No argument was addressed to us on behalf of the appellant that the decree ought, in any event, to have been so limited; but, for reasons to which we will refer later, we are of opinion that the decree should have been so limited.

First, it has been contended that no decree should have been given against the defendants beyond such amount as may have been found proved to have been actually collected; but in face of the finding that the accounts furnished are false and misleading and that there is no reliable evidence of actual collections, no such decree would, in any case, be possible. Next, it has been contended that no decree of any sort can be given against the defendants based on the negligence or misconduct of the deceased lambardar in carrying out his duty to make collections. This argument is, we think, based on an entire misconception of the rulings upon which reliance has been placed. It is argued that sub-section (2) of section 164 has no application at all where it is not the lambardar himself who is being sued but where the suit has been brought in the first place, as in this case, against the heirs of the lambardar. The argument for the appellants has been entirely founded on certain remarks in the cases of *Dip Singh* v. *Ram Charan* (1) and *Bharat Singh* v. *Tej Singh* (2). At page 17 of the report in the former case there is the following passage :—

"At first sight it might appear that the heir or representative of the lambardar would be so liable in respect of the negligence or misconduct of his predecessor in title, but

(1) (1906) I.L.R., 29 All., 15. (2) (1917) I.L.R., 40 All., 246.

if this had been the intention of the legislature, we should expect to find in sub-section (2) instead of the word 'defendant' the word 'lambardar'. That word does not occur in sub-section (2) of section 164. We are, therefore, of opinion that the successor in title of a deceased lambardar is not liable to account for profits which his predecessor may have failed to collect or which he permitted to remain uncollected owing to negligence or misconduct."

To appreciate the meaning of this passage it is only necessary to consider what were the facts of that case. The defendants were the son and two brothers of the deceased lambardar. With the deceased they constituted a joint Hindu family. This (we have examined the original record) was actually pleaded by the plaintiff and not controverted by the defendants. They were also joint lambardars in succession to the deceased lambardar. The plaint further alleged that the joint family property had benefited by the collections made by the deceased lambardar who had also been negligent. The suit was against the defendants *as present* lambardars in regard to their own conduct and also sought to hold them responsible for the liabilities of the deceased lambardar and asked for a decree against the defendants for a lump sum of the total amount due on both accounts.

Their Lordships suggested in the passage quoted that sub-section (2) of section 164 only made the "defendant" liable for his negligence or misconduct and did not make either his heir (this was *obiter* as the suit was against the defendants as succeeding "lambardars" and not as "heirs" of the deceased lambardar) or his representative so liable, and concluded by deciding that "*the successor in title of* a deceased lambardar is not liable" for the negligence or misconduct of the deceased.

In fact no question could arise in that case of the liability of the heir, as the family of the defendants and the deceased lambardar was joint and section 53 of the present Code of Civil Procedure did not then exist.

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We are, however, in full accord with the *obiter dictum* that the heir would not be liable and the decision that the successor in title to the office of lambardar would not be liable.

Our agreement in this view is not, however, influenced by the use of the word " defendant ". It would have been just the same if the words " co-sharer " and " lambardar " had been used; for there is no principle on which the heir or the successor in title as lambardar could possibly be held personally liable for negligence or misconduct of the deceased lambardar.

If indeed the learned Judges meant, as is contended before us, something more than this and intended to suggest that in their opinion the use of the word " defendant " in sub-section (2) of section 164 indicated that negligence or misconduct of a deceased lambardar died with him and could not be proved for the purpose of fixing liability even on his estate in the hands of heirs, we could not follow them; for in our view no such effect could result from the use of the word " defendant ", which appears to be used merely as a variant of but as synonymous with " lambardar ", as it is similarly used in section 165 where it could not possibly have any special significance.

But, in fact, we think the learned Judges clearly meant nothing more than that no personal liability could attach to the heir or successor in title.

But, further, in that case there was no decision and could be no decision as to whether the assets of the deceased lambardar could be liable in the hands of the defendants. The family was a joint family and there could be no question of heirs, and there was no suggestion of there being any self-acquired property of the deceased lambardar, and, as we have noted, section 53 of the Code of Civil Procedure, assuming that it would have helped the plaintiff, did not exist. The only question for decision

and the only question decided was,—Can a lambardar as successor in title of a deceased lambardar be held personally liable for the consequences of negligence or misconduct of his predecessor? The case is, therefore, in no way opposed to the proposition that if there are assets of the deceased lambardar in the hands of the defendants, those assets would be liable for the consequences of negligence or misconduct of the deceased.

The next case to which we were referred is *Bharat Singh* v. *Tej Singh* (1). That was a suit brought originally against the lambardar himself for actual collections and what he should have collected. He died during the pendency of the suit, and his son was brought on the record as heir to his assets. This last fact appears clearly from the referring order of Mr. Justice WALSH. The son was brought on the record not in his personal capacity but as holding the assets; and, as Mr. Justice WALSH put it, the sole question was "What was the liability in his life-time of the lambardar and what was the liability of his estate after his death"? Mr. Justice WALSH referred the case because there was a considerable body of authority, as he put it, for the proposition that the liability of the lambardar for negligence did not survive his death—a proposition with which he disagreed. The Full Bench held that the liability would survive. As Mr. Justice BANERJI phrased it:—

"On principle it does not seem that the assets of the deceased lambardar should escape liability simply because the said lambardar who had neglected to make collections or was guilty of gross misconduct happened to die after the expiry of the year during which the collections had to be made."

He further remarked:—

"In any case the liability of the representative of the lambardar would not be a personal liability."

Without following the reasoning of the learned Judge in its entirety as to the import of the words "plaintiff"

(1) (1917) I.L.R., 40 All., 216.

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and " defendant ", with these expressions of opinion we are in entire agreement.

Two isolated phrases in the judgements in this case have been pressed upon us on behalf of the appellant. Mr. Justice BANERJI said on page 253 :—

" If the person who was sued was the representative of the lambardar, he would be the defendant in the suit and he would not be liable according to the language of the section [sub-section (2) of section 164], as the misconduct or negligence could not be his misconduct or negligence. However, we are not called upon to decide that question in this case."

Mr. Justice PIGGOTT said :—

" He himself could not be held liable for any negligence or misconduct on the part of his father."

Neither of these passages supports the appellant here. They do not, in our opinion, purport to hold anything more than that the heir would not be personally liable, and they do not support the proposition that the estate of the deceased lambardar would not be liable in the hands of his heir. There is nothing in either of the two cases which to our mind is opposed to the conclusion that in this case the plaintiff was entitled to a decree against the estate of the deceased lambardar in the hands of the defendants.

In our view section 164 really does not give rise to any difficulty. Sub-section (1) provides for the simple suit for collections against the lambardar himself. Sub-section (2) merely says that he may further be held liable for non-collections due to negligence or misconduct. We agree with Mr. Justice WALSH that the words " plaintiff " and " defendant " are merely synonyms for the " co-sharer " and " lambardar " referred to in sub-section (1), just, as we have noted, as they are used in section 165 where the change cannot have any special significance. The legislature, in framing section 164, had not in view at all suits against the assets of a deceased lambardar in the hands of others, but left such a case, as it

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well might, to be dealt with in accordance with the ordinary principles governing all cases where it is sought to make the assets of a deceased person liable, merely putting the propriety of applying those principles beyond doubt by enacting in section 166 that the word "lambardar" includes his heirs, etc.

A plaintiff can in a suit against the lambardar prove negligence or misconduct with a view to getting a decree against the lambardar personally, or in a suit against a holder of assets of the lambardar can prove the negligence or misconduct of the deceased lambardar in order to get a decree against the estate of the deceased lambardar in the hands of such holder.

We think, therefore, that the plaintiff in this case was entitled to a decree to the full amount of the *jamabandi*, but that that decree should have been limited to the assets of the deceased lambardar in the hands of the defendants. The decree of the lower appellate court is modified accordingly. Parties will bear their own costs of the appeal.

Decree modified.

Before Justice Sir Cecil Walsh and Mr. Justice Banerji.

RAM PRASAD AND OTHERS (DEFENDANTS) *v.* MITHAN LAL (PLAINTIFF) AND SHYAM LAL AND OTHERS (DEFENDANTS).*

1927 *May*, 9.

Act (Local) No. III of 1901 *(United Provinces Land Revenue Act), sections* 107 *and* 111*—Partition—Objections based on adverse possession overruled as frivolous—Question of proprietary title—Appeal.*

In a suit for partition, whether a question of proprietary title is raised or not depends on the exact objections raised by an objector, and when an objector claims to be in possession

* Second Appeal No. 714 of 1925, from a decree of J. Allsop, District Judge of Aligarh, dated the 10th of January, 1925, confirming a decree of M. Abdurrab, Assistant Collector, first class of Aligarh, dated the 12th of March, 1924.