

unless the vendor's liability as imposed by section 55, sub-section (2), was excluded by express covenant, his liability would be deemed to subsist, notwithstanding the fact that the vendee may have some idea as to the defect in the title of the vendor. In the Calcutta case it was stated that the vendee was entitled to rely on the assurance of title on the part of the vendor, although he himself may have had some doubt as to it. We are of opinion that the view taken in Calcutta and in this Court quoted above is the correct view. The liability of the vendor clearly exists.

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The result is that the appeal fails and we hereby dismiss it with costs.

Before Mr. Justice Pullan and Mr. Justice Niamat-ullah.

SUNDAR LAL (PLAINTIFF) v. SUBEDAR SINGH  
(DEFENDANT).\*

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April, 1.

*Agra Tenancy Act (Local Act III of 1926), sections 265, 266—Right to collect rents—Mahal divided into pattis—Lambardar's right to collect rents in a patti in which he is not co-sharer—Immaterial whether such rents accrued before or after the present Tenancy Act.*

A lambardar is not entitled to collect rent unless the land for which rent is claimed belongs to all the co-sharers of the mahal, if he is the lambardar of the mahal, or to all the co-sharers of the patti, if he is the lambardar of the patti. In every case it is necessary that the lambardar should have a community of interest with other co-sharers in the land for which rent is claimed. If the lambardar has no proprietary interest in such land, he is not empowered by section 265 (1) of the Agra Tenancy Act, 1926, to collect rent in respect of such land. So, where a mahal is sub-divided into pattis, the lambardar of the mahal is not entitled to collect rents in a patti in which he has no share or proprietary interest.

Any authority which the lambardar might have had in this respect before the passing of the Agra Tenancy Act of

\*Second Appeal No. 994 of 1929, from a decree of L. V. Ardagh, District Judge of Shahjahanpur, dated the 2nd of April, 1929, confirming a decree of Ali Sajjad Husain, Assistant Collector, first class, of Shahjahanpur, dated the 29th of September, 1928.

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1926 became subject to the limitations imposed by sections 265 and 266 of that Act, regardless of the fact whether the arrears of rent were in respect of a period subsequent to the passing of that Act or prior to it.

Mr. *Haribans Sahai*, for the appellant.

Mr. *Shiva Prasad Sinha*, for the respondent.

PULLAN and NIAMAT-ULLAH, JJ. :—This appeal arises out of a suit for arrears of rent brought by the appellant, professing to act as lambardar of mahal No. 3 in village Chaurihanpur, district Shahjahanpur. It is not disputed that that mahal stands sub-divided by an imperfect partition into a number of patti, one of which is patti Pem Singh. It is also not in dispute that the plaintiff appellant has no proprietary interest in patti Pem Singh. The land for which rent is claimed from the defendant respondent, Subedar Singh, who is alleged to be the tenant, is in its entirety situate in patti Pem Singh. The suit was contested *inter alia* on the ground that the plaintiff appellant is not empowered to collect rent in patti Pem Singh. Both the lower courts have dismissed the suit, holding that the plaintiff appellant is not entitled to sue the defendant respondent for rent, assuming it is payable by him, in respect of the holding in dispute, which is also in controversy.

In second appeal by the plaintiff appellant, it is contended on his behalf that the lambardar of a mahal is the only person authorised to collect rent in respect of land within that mahal, though it may be situated in a patti in which the lambardar himself is no co-sharer and has no proprietary interest. We are clearly of opinion that this contention is not warranted by the language of section 265 of the Agra Tenancy Act on which the contention is based. Sub-section (1) of that section runs as follows: "The lambardar in an undivided mahal or in the common land of the mahal, thok or patti of which he is the lambardar is entitled in

the absence of any contract or usage to the contrary to collect rents and other dues.”

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The plaintiff appellant is not a lambardar in an undivided mahal. It is argued that he is entitled to collect the rent payable in respect of land in patti Pem Singh, which is “common land” so far as co-sharers of that patti are concerned, and that it is not necessary that the lambardar should be one of the co-sharers *qua* such land. In our opinion, a lambardar is not entitled to collect rent, unless the land for which rent is claimed belongs to all the co-sharers of the mahal, if he is the lambardar of the mahal, or to all the co-sharers of the patti, if he is the lambardar of the patti. In every case it is necessary that the lambardar should have a community of interest with other co-sharers in the land for which rent is claimed. If the lambardar has no proprietary interest in such land, as is the case before us, he is not empowered by section 265 (1) of the Agra Tenancy Act to collect rent in respect of such land. Another Division Bench of this Court has taken the same view of section 265 in *Khan Ali Khan v. Masih-ulzaman Khan* (1). Accordingly we uphold the view on which the decree of the lower appellate court proceeds.

Reliance is also placed on section 132 of Act III of 1926. That section, however, merely provides that arrears of rent shall be recovered “by suit, or by distraint, or by notice through the Tahsildar, in accordance with the provisions of this Act, or in any one or more of such ways”. It does not enable the lambardar to free himself from the trammels of section 265, already referred to.

The plaintiff appellant claimed rent for years 1332 to 1334 Fasli. The present Tenancy Act (No. III of 1926) was passed in September, 1926, that is to say, after the commencement of the Fasli year

(1) [1931] A.L.J., 1068.

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1334. The learned advocate for the plaintiff appellant argues that he is at any rate entitled to collect rent for the period preceding the passing of Act III of 1926, inasmuch as under the law as it existed before that enactment a lambar<sup>dar</sup> was entitled to sue in circumstances like those of the present case. The plaintiff appellant obtained decrees against the defendant respondent for arrears of rent in respect of past years before Act III of 1926 was passed. These decrees are relied on as concluding all questions in respect of the plaintiff appellant's right to sue for arrears of rent. In view, however, of the procedure laid down by Act III of 1926 in sections 265 and 266 for the collection of rent, decisions under the previous enactment cannot operate as *res judicata*. The suit which has given rise to this appeal was instituted on the 31st of October, 1927, long after the passing of Act III of 1926. Any authority which the lambar<sup>dar</sup> might have had before the passing of this Act became subject to the limitations imposed by sections 265 and 266 of the Agra Tenancy Act, regardless of the fact whether arrears were in respect of a period subsequent to the passing of that Act or prior to it. We are concerned with the extent of his authority when he attempts to collect rent and not when he could have exercised it but failed to do so. In this view, the plaintiff appellant was not empowered to institute the present suit for recovery of rent for the years 1332 to 1334 Fasli.

The result is that the appeal fails and is dismissed with costs.