

1931

RAM SARAN  
DAS  
v.  
VUDHISHTEER  
PRASAD.

Mukerji, J.

there need be any document purporting to be a deed of assignment, apart from a mere order of the court authorising a particular person to institute a suit. In my opinion the order of the court alone would do and no deed is called for. If the authorisation (assignment) may be made by an order of the court, it would not be required to be registered under the registration law and would, besides, be not affected by the provisions of the Transfer of Property Act itself. Under section 2(d), Transfer of Property Act, the provisions of the Act are not to affect any transfer made by an order of a court of competent jurisdiction.

For these reasons, I agree with the learned Chief Justice in answering the question in the way he proposes to answer it.

Boys, J., concurred in the answer.

By THE COURT:—The answer to the question referred is that the assignment need not be made by a regularly stamped and registered deed of sale but may be made by an order passed by the court.

## APPELLATE CIVIL.

*Before Mr. Justice Mukerji and Mr. Justice Bennet.*

JADUNATH SINGH (PLAINTIFF) v. HANUMAN SINGH  
AND OTHERS (DEFENDANTS)\*

1931  
April, 9.

*Agra Tenancy Act (Local Act III of 1926), section 227—  
Suit for profits against co-sharers—Mode of accounting—  
Sir and khudkasht plots usufructuarily mortgaged.*

When a co-sharer makes a usufructuary mortgage of part of his share or of specific plots of which he is in exclusive possession, a court in a suit for profits should regard the co-sharer and his mortgagee as a single unit. If that co-sharer

\*Second Appeal No. 319 of 1928, from a decree of A. H. deB. Hamilton, District Judge of Allahabad, dated the 18th of November, 1927, modifying a decree of Har Sarup Pathak, Assistant Collector, first class of Mirzapur, dated the 31st of March, 1927.

1931

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 JADUNATH  
 SINGH  
 v.  
 HANUMAN  
 SINGH.

and his mortgagee together are in receipt of a greater share of profits than they are entitled to, then a decree should be passed against them in favour of a plaintiff who is in receipt of less profits than he is entitled to by his share. The adjustment between the co-sharer and his mortgagee of the liability which they jointly incurred to such a plaintiff is a matter for the co-sharer and his mortgagee to settle between themselves.

Dr. M. L. Agarwala, for the appellant.

Messrs. *Shiva Prasad Sinha* and *Kedar Nath Sinha*, for the respondents.

MUKERJI and BENNET, JJ. :—These are two appeals by the plaintiff and one appeal by certain defendants against an order in first appeal by the learned District Judge of Allahabad in a suit for profits by the plaintiff. There were originally two suits, one in regard to mahal Bhagwant Singh and one in regard to mahal Sheozor Singh. The plaintiff is a co-sharer in these mahals and he is not in possession of any area of *sir* and *khudkash* and he has not been receiving any rents or profits for the years in suit. In mahal Bhagwant Singh there are forty-five defendants and it is found that these defendants are in possession of different areas of *sir* and *khudkash*, some of which they cultivate and some of which they sublet to subtenants. There is also in this mahal about 10 bighas of land which is let to non-occupancy tenants. The court of first instance decreed the suit of the plaintiff, granting him a decree in mahal Bhagwant Singh for Rs. 572-13-8 as his share of profits, assigning different amounts as due from different defendants according as the court of first instance held that different defendants had cultivated more than their shares. In mahal Sheozor Singh a sum of Rs. 248-0-6 was awarded to the plaintiff on similar grounds. The lower appellate court set forth certain principles, one of which was that where fields were separately sold or mortgaged these specific plots should not be taken into account in these suits for profits. Accordingly, as a

1931

JADUNATH  
SINGH  
v.  
HANUMAN  
SINGH.

result of this principle, the lower appellate court reduced the area of land which yielded profits of mahal Bhagwant Singh to 91 bighas instead of 138 bighas and it found that nothing was due to the plaintiff in that mahal. The result of this finding is that the plaintiff, although he is a co-sharer in mahal Bhagwant Singh and has not received any profit for the years in suit, is held to be due no profits for those years. This is a very extraordinary result and gives rise to the presumption that there was something wrong in the theory of the lower appellate court. Now the plaint set forth that of the forty-five defendants, defendants 1 to 28 were co-sharers and defendants 29 to 45 were possessory mortgagees of part of the mahal. We do not find anything on the record to indicate that defendants 29 to 45 are not mortgagees of shares, but even if some of them were mortgagees of specific plots, we do not think that on this account they should be exempted from a decree for a share of profits. In our view, when a co-sharer makes a usufructuary mortgage of part of his share or of specific plots of which he is in exclusive possession, a court in a suit for profits should regard the co-sharer and his mortgagee as a single unit. If that co-sharer and his mortgagee together are in receipt of a greater share of profits than they are entitled to, then a decree should be passed against them in favour of a plaintiff who is in receipt of less profits than he is entitled to by his share. The adjustment between the co-sharer and his mortgagee of the liability which they jointly incurred to such a plaintiff is a matter for the co-sharer and his mortgagee to settle between themselves. What the court has to look to is whether the co-sharer plus the mortgagee are in possession of a greater area of *sir* and *khudkasht* than they are entitled to, that is, whether they are receiving more profits than they are entitled to, taking the annual net income of their area into account.

The question of the sale of a specific plot by a co-sharer is in our opinion similar. If a co-sharer chooses to sell a specific plot, then that plot must still be considered as part of his share for the purpose of a suit for profits. Otherwise it would be possible for co-sharers to sell specific plots with the result that a co-sharer not in possession of specific plots would be altogether deprived of any benefit from his share in the mahal. These are the general principles which we consider should govern a suit where such questions arise.

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Accordingly we remand this case to the lower appellate court for disposal in view of the law which we have laid down. Costs here and hitherto will abide the result.

### REVISIONAL CRIMINAL.

*Before Mr. Justice Pullan.*

EMPEROR v. ALLAH BAKHSH\*

*Criminal Procedure Code, section 421—Jail appeal—Summary dismissal—Reasons need not be given in judgment.*

1931  
April, 10.

A court summarily dismissing, under section 421 of the Criminal Procedure Code, an appeal received from jail is not required by law to give any reasons for the dismissal, and the omission to do so is no ground for revision.

*Queen-Empress v. Nannhu* (1), referred to.

Mr. *Mansur Alam*, for the applicant.

The Assistant Government Advocate (Dr. M. *Waliullah*), for the Crown.

PULLAN, J. :—This is an application in revision of an order of the Additional Sessions Judge of Meerut rejecting summarily an appeal received from the jail.

\*Criminal Revision No. 20 of 1931, from an order of Aghor Nath Mukerji, Additional Sessions Judge of Meerut, dated the 16th of September, 1930.