

*Before Sir Shah Muhammad Sulaiman, Chief Justice, and
Mr. Justice Bennet*

1937
March, 18

BRIJ CHANDRA SHARMA (PLAINTIFF) *v.* RAM NARAIN
AND OTHERS (DEFENDANTS)*

*Agra Tenancy Act (Local Act III of 1926), sections 221, 229—
Land Revenue Act (Local Act III of 1901), section 142—Suit
by lambardar against defaulting co-sharer—"Co-sharer"—Heir
of co-sharer, not in possession—Suit not maintainable against
him—Suit maintainable only against person who was in
possession as co-sharer during the relevant period.*

Where a person without real title obtained mutation and possession as the heir of a deceased co-sharer, and he made default in contributing his share of the land revenue, the lambardar's suit under section 221 of the Agra Tenancy Act for realisation of such share can be brought against him only, and not against the real heir who has subsequently ousted such person and taken possession after the period to which the suit relates. For the purpose of section 221 a co-sharer must be taken to mean the person who is recorded as a co-sharer for the period to which the suit relates and not the rightful person who was then out of possession.

Section 142 of the Land Revenue Act, under which there is a responsibility on a person succeeding to proprietary possession for all arrears of revenue due at that time, deals with responsibility to Government; the position of a lambardar is different and his right is merely a personal right against the person who is recorded as a co-sharer for the period to which the suit relates.

Mr. *Basudeva Mukerji*, for the appellant.

Mr. *Vishwa Mitra*, for the respondents.

SULAIMAN, C.J., and BENNET, J.:—This is a second appeal by the plaintiff against a decree of the lower appellate court holding that defendant No. 6 is not liable for the claim of the plaintiff brought under section 221 of Act III of 1926, the Agra Tenancy Act. The plaint sets out that the plaintiff is a lambardar of mauza Jahangirpur and that he paid the land revenue for the Fasli year 1338 and the Fasli year 1339 to the

*Second Appeal No. 1000 of 1934, from a decree of Harish Chandra, District Judge of Moradabad, dated the 11th of April, 1934, reversing a decree of Mir Ali Raza, Assistant Collector, first class, of Bijnor, dated the 23rd of January, 1933.

Government treasury and that during those years defendants Nos. 1 to 3 were owners in possession of half the property and defendant No. 4, mortgagee, was in possession of the other half. The property had originally belonged to one Mst. Champa Devi, who died in December, 1926. The defendants 1 to 3 obtained mutation and possession as her heirs. Defendant 6, Ram Narain, contested their claim and filed a civil suit and eventually succeeded in obtaining a decree of the High Court for possession as the heir of Mst. Champa Devi, and on that decree he was put into possession and his name was entered in the khewat on the 22nd of July, 1932. This was just after the period for which the land revenue is claimed, the years 1930-31 and 1931-32, as the period ended in June, 1932. The plaint set out that the claim was brought against defendants 1 to 4 and in paragraph 5 it was stated that if for any reason in the opinion of the court defendants 1 to 4 or any of them is not found to be responsible to the plaintiff, a decree may be passed against defendants 5 and 6. Defendant 5 is Mst. Manohari and her case does not concern us as the trial court dismissed the suit against her. Paragraph 6 of the plaint asked that a decree might be passed against all the defendants or against those defendants who were held responsible. The trial court passed a decree against all the defendants except Mst. Manohari, the responsibility being joint and several. The only appeal brought was by defendant 6, Ram Narain, and the court below has held that as Ram Narain was not in possession during the period for which the plaintiff paid land revenue, there was no liability against Ram Narain. The sole question argued in this appeal is that although Ram Narain was not in possession during the years in suit, still, because he has been found eventually to be the legal heir of Mst. Champa Devi therefore the plaintiff has a claim not only against the persons who were in possession, against whom he has obtained a decree, but also against

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defendant 6 as the legal heir although he was not in possession.

Learned counsel endeavoured to substantiate this argument by reference to various sections. Section 221 of the Agra Tenancy Act states as follows:—"A lambardar may sue a co-sharer for arrears of revenue payable to the Government through the lambardar by such co-sharer and for village expenses and other dues for which such co-sharer may be liable to the lambardar." There is nothing in this section which indicates that the person who may be sued is a co-sharer out of possession. Section 229 states that the word "co-sharer" includes also "the heirs, legal representatives, executors, administrators and assigns of such person". Now although the defendant 6 is no doubt the heir of Mst. Champa Devi, he is in no way connected with the persons who were in possession, defendants 1 to 3. So the liability which existed on defendants 1 to 3 cannot in any way be transferred to defendant 6 by virtue of the provisions in section 229 of the Tenancy Act. Learned counsel further referred to section 142 of the Land Revenue Act, Act III of 1901. That section provides as follows:—"All the proprietors of a mahal are jointly and severally responsible to Government for the revenue for the time being assessed thereon, and all persons succeeding to proprietary possession therein, otherwise than by purchase under section 160, shall be responsible for all arrears of revenue due at the time of their succession." This section therefore indicates that the persons who are responsible to Government are those in proprietary possession and those succeeding to proprietary possession. At the same time the explanation states that a proprietor means a person in proprietary possession. There is no doubt that as regards this section there is a responsibility on a person succeeding for all arrears of revenue due at the time of his succession. But the section deals with responsibility to Government and no doubt there is a

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charge in favour of Government on the property of a co-sharer and that charge remains on the property and can be enforced against the property in the hands of anyone to whom the share may come. But the position of a lambardar is different. There is no charge created by section 221 of the Tenancy Act in favour of the lambardar and his right is merely a personal right against a co-sharer. We are of opinion that for the purpose of section 221 a co-sharer must be taken as the person who is recorded as a co-sharer for the period in suit. Under section 40 of the Land Revenue Act all disputes regarding entries in the annual registers are decided on the basis of possession, and when the revenue court finds that a certain person is in possession as a co-sharer all the liabilities of the co-sharer attach to that person. It is that person alone who can be the subject of a suit under section 221 of the Tenancy Act. If we were to hold otherwise and hold that a proprietor out of possession could be a co-sharer within the meaning of chapter XIV of the Tenancy Act, then such a person would have a right to bring a suit for profits against the lambardar and considerable confusion would arise if the revenue courts were required to adjudicate on the rights of rival claimants to be co-sharers on the basis of their title, a matter which is solely for the civil courts to determine.

Although no ruling has been shown directly dealing with the case of a lambardar and a co-sharer, we have been shown a ruling by TUDBALL, J., in *Ballab Das v. Sita Ram* (1). In this ruling it was held that a co-sharer who pays arrears of revenue on behalf of another co-sharer cannot recover the same under section 160 of the Agra Tenancy Act, II of 1901, if the defaulting co-sharer was not in possession at the time of default. There is also a ruling of a Bench of this Court in *Muhammad Abdul Jalil Khan v. Muhammad Ubaid Ullah Khan* (2), where it was laid down that no suit for

(1) (1912) 14 Indian Cases, 578.

(2) [1931] A.L.J., 1076.

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profits against a lambardar lies at the instance of an owner who has been dispossessed by other people whose names are recorded in the revenue papers, and that such a person himself should obtain possession through the civil court against the trespassers before he can be entitled to maintain the suit.

For these reasons we consider that the decree of the lower court was correct and we dismiss this second appeal with costs.

APPELLATE CIVIL

Before Mr. Justice Collister and Mr. Justice Bajpai

EMPEROR v. CHOKHEY*

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Arms Act (XI of 1878), section 19(f)—Possession and control of arm—Person hiding and burying a gun on railway land—Evidence Act (I of 1872), section 27—Statement by person in police custody leading to discovery of material evidence—How much of such statement can be proved.

Section 27 of the Evidence Act intends that the minimum portion of a confession made to a police officer or of information given to him should be admitted in evidence which might reasonably be held to relate distinctly and positively to the fact discovered and which is necessary to be proved in order adequately to explain such discovery. So, where an accused person in the custody of a police officer said to him "I have buried a gun at such and such a place", not only the fact of the discovery of the gun but also the statement of the accused that he had buried the gun at that place was admissible in evidence.

The statement of the accused, made to the police officer, that he himself had buried the gun at a certain place and the fact that he took the police officer to that place and unearthed the gun were sufficient to establish his possession of and control over the gun, notwithstanding that the place was railway land and within the railway fencing and accessible to the public, and his conviction under section 19(f) of the Arms Act was valid.

*Criminal Appeal No. 822 of 1936, by the Local Government, from an order of Ali Muhammad, Sessions Judge of Mainpuri, dated the 2nd of July, 1936.