

## APPELLATE CIVIL

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

1935  
November, 28

MALLHE KHAN AND OTHERS (JUDGMENT-DEBTORS) *v.* GULAB  
SINGH (DECREE-HOLDER)\*

*Land Revenue Act (Local Act III of 1901), sections 141, 146,  
184—Land revenue "first charge" on the land—Agra  
Tenancy Act (Local Act III of 1926), section 221—Lambar-  
dar's decree against co-sharer for share of revenue—Execution  
sale of the share and purchase by lambardar—Whether he  
gets priority over a previous mortgagee decree-holder on the  
ground that land revenue is the first charge on the land.*

Section 141 of the Land Revenue Act is not intended to apply to a decree-holder under section 221 of the Agra Tenancy Act. It is only in the case of proceedings for an arrear of revenue taken under the Land Revenue Act that section 141 of that Act will apply. The land revenue is a first charge on the land as laid down in section 141 when the revenue is payable to Government and proceedings are taken under section 146 of the Act for its realisation, or when the Collector takes proceedings under section 184 of the Act on behalf of a lambardar. Where the lambardar himself brings a suit against a co-sharer under section 221 of the Agra Tenancy Act for realisation of revenue and in execution of the decree purchases the co-sharer's share, he gets no priority by virtue of section 141 of the Land Revenue Act as against the holder of a previous mortgage decree against that share.

Mr. H. C. Mukerji, for the appellants.

Mr. Nanak Chand, for the respondent.

SULAIMAN, C.J., and BENNET, J.:—This is a Letters Patent appeal by three persons, but learned counsel stated to us that he addressed us only in regard to appellant No. 1 who was the lambardar. The appellant claims that as lambardar he brought a suit against Mst. Ram Piari, the appellant No. 3 for arrears of revenue which he had paid on her behalf and obtained a decree under section 221 of the Agra Tenancy Act of 1926. He put her share up to auction and on the

\*Appeal No. 12 of 1935, under section 10 of the Letters Patent.

25th of May, 1933, he purchased 1/10th share in the property in suit and obtained possession. The opposite party is a decree-holder who obtained a simple mortgage decree on the 27th of November, 1931, against the shares of Chandan Singh and his wife Mst. Ram Piari, and a final decree on the 5th of November, 1932, and on the 21st of January, 1933, he applied for execution of his final decree and the decree was sent to the Collector for sale of the property. The appellant before us made an objection to the effect that owing to his having purchased the 1/10th share on account of a decree for arrears of revenue paid by him he has a prior charge within the wording of section 141 of the Land Revenue Act which states as follows: "In the case of every mahal the revenue assessed thereon shall be the first charge on the entire mahal, and on the rents, profits or produce thereof. The rents, profits or produce of a mahal shall not be applied in satisfaction of a decree or order of any civil court until all arrears of revenue due in respect of the mahal have been paid."

The argument for the appellant is that under this section the revenue is a first charge on the entire mahal, and as he got a decree for arrears of revenue against the co-sharer and obtained possession of the share in execution sale of that decree therefore he can hold up his charge against the present decree-holder on the mortgage decree although in fact the mortgage decree was prior to the decree for arrears of land revenue. The question is whether section 141 of the Land Revenue Act is intended to apply to a decree-holder under section 221 of the Agra Tenancy Act. If the lambardar had desired to proceed under the Land Revenue Act he could have applied under section 184 of that Act to the Collector to recover the amount which he had paid, "as if it were an arrear of revenue payable to Government". In that case the Collector could have taken any of the proceedings laid down in section 146. But if the Collector had desired to sell the share he

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would have had to obtain sanction from the Board of Revenue under section 160. The procedure adopted by the lambardar has resulted in the sale of the share without such sanction from the Board of Revenue. We are of opinion that the language of section 184 shows that the right of the lambardar is not the same as the right of Government and for this reason the words are used, "as if it were an arrear of revenue payable to Government". It is only in the case of proceedings for an arrear of revenue taken under the Land Revenue Act that section 141 of the Land Revenue Act will apply. There is nothing whatever in the Land Revenue Act or in the Tenancy Act to indicate that section 141 of the Land Revenue Act can apply to section 221 of the Tenancy Act. Learned counsel failed to produce any ruling to show that any court has ever held that section 141 of the Land Revenue Act can apply to section 221 of the Tenancy Act. We are of opinion that the first charge of the Government laid down in section 141 of the Land Revenue Act is a first charge of the revenue when the revenue is payable to Government or when the Collector takes proceedings under section 184 of that Act on behalf of a lambardar. We consider that the prior charge cannot be applied in the present case to the decree obtained by the lambardar under section 221 of the Tenancy Act. That being so, we consider that the judgment of the learned single Judge of this Court is correct and we dismiss this Letters Patent appeal with costs. We may add that we consider that the execution court would exercise a proper discretion in the present case if it put to sale the other property and did not put to sale this 1/10th share except in case the other property proved insufficient.