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nothing in the Act shall apply to any transfer in execution of a decree other than as so provided in chapter IV, it is clear that section 100 as amended does not refer to auction sales or auction purchasers.

No ruling has been produced by learned counsel for the appellant to support his claim that his client was protected by section 100 as amended. The rulings cited are all previous to the amendment of section 100 and it is not necessary to consider them.

For these reasons we dismiss this second appeal. No costs are granted as no one appears for the other side in this appeal.

Before Sir John Thom, Chief Justice, and  
Mr. Justice Ganga Nath

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MAN SINGH AND ANOTHER (DEFENDANTS) v. BAIJ NATH SAHAI (PLAINTIFF)\*

*Agra Tenancy Act (Local Act III of 1926), section 227—Suit for settlement of accounts and share of profits against a collecting co-sharer—Defendant entitled to retain for himself not his share of the gross rental but only his proportionate share of the actual collections.*

In a suit under section 227 of the Agra Tenancy Act the collecting co-sharer is not entitled to deduct his entire share in the whole jamabandi from collections which he has made from some of the tenants; he is only entitled to appropriate from his realisations an amount proportionate to his share in the khewat.

The right conferred by this section is not affected by the fact that the co-sharer who has collected has not acted as the agent of the co-sharer who is seeking to recover his share of the profits; nor is the extent of the liability of the collecting co-sharer dependent upon whether he acted in his individual capacity or as agent in making collections.

*Kanhaiya Lal v. R. H. Skinner* (1), dissented from.

Mr. Nanak Chand, for the appellants.

Mr. Jagnandan Lal, for the respondent.

\*Appeal No. 41 of 1938, under section 10 of the Letters Patent.

(1) (1931) I.L.R. 54 All. 240.

THOM, C.J., and GANGA NATH, J.:—This is a defendants' appeal against the decision of a learned single Judge of this Court. The appeal arises out of a suit under section 227 of the Agra Tenancy Act of 1926. The plaintiff's claim is in respect of his share of profits for the years 1337 to 1339 Fasli. The sum claimed is Rs.570. The suit was contested by two defendants, namely the present appellants who filed a joint written statement. It was denied in the written statement that they had made any collections of rents from tenants for the years in question and it was averred that the plaintiff himself had realised his share of rents from the tenants.

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The main question for consideration in this appeal is as to the extent of the liability of Man Singh who made certain collections during the years in question. It was contended for Man Singh that he was entitled to deduct from the collections which he had made his total share of the profits in the whole jamabandi. On the other hand it was maintained for the plaintiff that Man Singh was only entitled to deduct a proportionate amount from his collections corresponding to his share in the rent due by each tenant.

The question which is one of law was considered in the case of *Kanhaiya Lal v. R. H. Skinner* (1). In that case PULLAN, J., and MUKERJI, J., held that a collecting co-sharer was entitled to deduct the full amount of the rent due to him from his collections and not merely a proportionate share corresponding to his share in the khewat. This view was based upon the principle that a collecting co-sharer does not act as the agent of the other co-sharers. NIAMAT-ULLAH, J., held on the other hand that a collecting co-sharer was entitled to deduct from his realisations only a proportionate share corresponding to his share in the khewat.

Under section 227 of the Agra Tenancy Act "A co-sharer may sue another co-sharer for a settlement of

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accounts and for his share of the profits of a mahal or any part thereof." The right conferred by this section is not affected by the fact that the co-sharer who has collected has not acted as the agent of the co-sharer who is seeking to recover his share of the profits. The co-sharer who has collected is liable to account and the question is, what is the extent of his liability? The extent of his liability is not dependent upon whether he acted in his individual capacity or as agent in making collections.

In our judgment the collecting co-sharer is entitled to retain out of what he has collected from a tenant only a share proportionate to his share in the khewat; to hold otherwise would be to permit a practice which would in most cases result in chaos and confusion. As NIAMAT-ULLAH, J., has observed in his judgment in *Kanhaiya Lal v. R. H. Skinner* (1) at page 254: "To hold otherwise would be to open a door for endless scramble. An influential and resourceful co-sharer may, in disregard of the power of the lambardar, steal a march over him and other co-sharers by collecting from the best tenants to the extent of his share of the gross rental and leaving irrecoverable rents for the rest. This state of things, if permitted by law, would be intolerable and would lead to gross abuse in certain cases." We find ourselves in agreement with NIAMAT-ULLAH, J., in his exposition of the law in the case above referred to and we hold that a collecting co-sharer is not entitled to deduct his entire share in the whole jama-bandi from collections which he has made from some of the tenants in the khewat. He is entitled to appropriate from his realisations only an amount proportionate to his share in the khewat. On this point therefore we uphold the decision of the learned single Judge.

There is a further point in issue. It was contended by the defendants that the collections which were made were made by Man Singh on behalf of himself and by him on behalf of Darya Singh, a minor. It was claimed

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that Darya Singh's share was collected by Man Singh as his guardian. As the learned single Judge has remarked in the course of his order: "The question whether Man Singh was entitled to deduct from the collections made by him only the amount payable to him by the tenants on account of his share of the rent or also on account of the share of Darya Singh does not appear to have been debated or discussed in the trial court. . . . If it be a fact that in the year 1337 Fasli Man Singh was the guardian of Darya Singh no exception can be taken to the decision of the learned District Judge directing that the collections made by Man Singh be credited both towards the accounts of Man Singh and Darya Singh. But no finding has been recorded by the learned District Judge on the question whether or not Man Singh was the guardian of Darya Singh in the year 1337 Fasli. This matter will have to be inquired into and decided by the lower appellate court." In the result the learned single Judge remanded the case for the decision of the questions as to whether Man Singh was the guardian of Darya Singh in the years in suit, and, further, whether Man Singh made collections in the years in suit only on his own behalf or also on behalf of Darya Singh. In the circumstances we consider this was an appropriate order to pass and we see no reason whatever to interfere with it.

In the result the appeal is dismissed with costs.

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