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 PEAREY LAL  
 v.  
 MISRI

“3. One co-owner can, without the consent of the others, transfer his interest, or in the case of land his equitable interest, to a stranger, so as to put him in the same position as regards the other owners as the transferor himself was before the transfer, except that in the case of a transfer by a joint tenant the stranger will become a tenant in common or in the case of land a tenant in common in equity with the other owners. A partner cannot do this.”

The property in dispute was allotted subsequently to Bhagwan Das, the plaintiffs' vendor, on the dissolution of partnership. Whatever defect there was in the sale deed at the time it was made was subsequently cured in virtue of section 43 of the Transfer of Property Act, when Bhagwan Das acquired the property on the dissolution of partnership. The plaintiffs have a right to avail themselves of the benefit of the provisions of section 43 of the Transfer of Property Act. They have so elected.

In the result the appeal is dismissed with costs.

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

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 July, 30

RAMPAT SINGH AND ANOTHER (DEFENDANTS) v. NAGESHAR  
 SINGH AND OTHERS (PLAINTIFFS)\*

*Agra Tenancy Act (Local Act III of 1926), sections 4, 44—Suit by sir holder for ejectment of a co-sharer in the mahal—“Landholder”—Agra Tenancy Act, section 266—Suit for ejectment by khudkasht holder, without joining the other co-sharers in the mahal as co-plaintiffs—Maintainability.*

A suit for ejectment from the khudkasht plots held by the plaintiffs, brought without joining as co-plaintiffs the other co-sharers in the mahal, is not barred by section 266 of the Agra Tenancy Act. So far as the khudkasht rights are concerned, i.e. the right to be in possession of and to cultivate the plots, the plaintiffs alone are entitled to such rights and there are

\*Second Appeal No. 1715 of 1937, from a decree of S. B. Chandiramani, District Judge of Gorakhpur, dated the 8th of March, 1937, reversing a decree of Abdur Rahman Adhami, Honorary Assistant Collector first class of Gorakhpur, dated the 28th of September, 1936.

no co-sharers in such rights whom it is necessary, by reason of section 266, to join as co-plaintiffs.

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A sir holder is entitled to have his land cultivated by tenants and he is, therefore, a "landholder" within the meaning of section 44 of the Agra Tenancy Act and can bring a suit for ejectment under that section against persons who invade his sir plots.

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RAMPAT  
SINGH  
v.  
NAGESHAR  
SINGH

Mr. S. N. Verma, for the appellants.

Mr. S. S. Dhawan, for the respondents.

THOM, C. J., and GANGA NATH, J.:—This is a defendants' appeal arising out of a suit for ejectment and damages.

The respondents alleged that they were zamindars of certain plots and a certain area was their khudkasht and that the defendants had taken possession of the same without their consent.

The learned District Judge in the lower appellate court has held that the plaintiffs are entitled to eject the defendants from an area of .06 acres and he has awarded the sum of Rs.1-8-0 as damages against the defendants.

In appeal it was contended that the suit was barred by the provisions of sections 266 and 44 of the Agra Tenancy Act. So far as section 266 is concerned, in our judgment the suit is not barred. It is true that the plaintiffs have not impleaded the other co-sharers in the mahal in which the plots in dispute are situated, but the plaintiffs are the only persons who are interested in the khudkasht rights which they seek to protect in the present suit. Section 266 of the Agra Tenancy Act enjoins that "where there are two or more co-sharers in any right, title or interest, all things required or permitted to be done by the possessor of the same shall be done by them conjointly, unless they have appointed an agent to act on behalf of them all." Now so far as the khudkasht rights are concerned, i.e., the right to be in possession and to cultivate the plots, the plaintiffs are the only persons with any right, title or interest. It is true that they have a right, title and interest in the

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plots which they share along with the other co-sharers but they and they alone are entitled to be in possession of the plots and to cultivate the same as their khudkasht. It is unnecessary therefore that they should implead the other co-sharers in a suit in which they seek to protect that particular right. This is especially so where that particular interest is being invaded by other co-sharers.

So far as the appellants' plea based upon section 44 of the Agra Tenancy Act is concerned it is sufficient to say that from the information upon the record it would appear that the plaintiffs are sir holders in respect of the area now in dispute. That area was recorded as khudkasht as far back as 1912. In view of the provisions of section 4(d) of the Agra Tenancy Act, therefore, it must have become sir long before the institution of the present suit. Learned counsel for the appellants urges, however, that in the interval between 1912 and the institution of this suit the area in dispute might have lost its character as khudkasht and at a later stage after the passing of the Agra Tenancy Act of 1926 recovered that character. This is within the bounds of possibility, but whether the character of the land changed as is suggested or not is a pure question of fact which we cannot allow the appellants to raise at this stage. We are entitled to conclude that so far as the area in dispute is concerned the plaintiffs have sir rights. According to section 4 of the Agra Tenancy Act "sir right means the sum of all the special rights conferred on sir holders by this Act and by the U. P. Land Revenue Act, 1901, and includes the right to exclusive possession of the sir against co-sharers of the sir holder in the proprietary right, subject to a liability to account for profits." A sir holder is entitled to have his land cultivated by tenants and he is a landholder therefore within the meaning of section 44 of the Agra Tenancy Act. The suit therefore is not barred by that section.

In the result the appeal is dismissed with costs.