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his purchase can become effective as a purchase he must obtain the sanction of the Collector to the transaction. The intention of the legislature in section 7, in other words, was to ensure that so far as Bundelkhand land is concerned non-agriculturists should be permitted to pre-empt only if they had obtained the sanction of the Collector to institute a suit for pre-emption.

It was contended that the plaintiff's suit must fail because on the date of the sale there was no cause of action. This argument, in our judgment, is unsound. The land which the plaintiff was according to local custom entitled to pre-empt had been sold; he was not prohibited from purchasing the land, and he had obtained the Collector's permission to institute a suit for pre-emption and—although this was not necessary—separate sanction to purchase. In these circumstances he had a cause of action on the date of institution of the suit.

Upon the whole matter we are satisfied that the right of a non-agriculturist to institute proceedings for the pre-emption of Bundelkhand land is preserved by the provisions of the Agra Pre-emption Act.

As a result the appeal is allowed. The orders of this Court and that of the lower appellate court are set aside and the case is remanded to the lower appellate court for disposal according to law. The plaintiff is entitled to his costs in appeal in this Court. The court-fee will be refunded.

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

SULTAN AHMAD KHAN (PLAINTIFF) v. JALALUDDIN AND  
ANOTHER (DEFENDANTS)\*

*Agra Tenancy Act. (Local Act III of 1926), section 44—Lambardar's suit for ejectment of co-sharer—Such suit does not come under the section—Lambardar not "landholder" of co-sharer—Co-sharer not a "trespasser".*

A lambardar is not entitled to eject a co-sharer from a particular plot by a suit under section 44 of the Agra Tenancy

\*Second Appeal No. 1406 of 1937, from a decree of I. B. Mundle, District Judge of Bareilly, dated the 12th of March, 1937, reversing a decree of D. Vira, Assistant Collector, first class of Bareilly, dated the 28th of April, 1936.

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Act. The lambardar is not the "landholder", as defined in section 3 of the Act; the rent of the plot occupied by the co-sharer is payable to the co-sharers of the mahal, the lambardar being entitled only to collect the rents. Further, a co-sharer cannot be regarded as a "trespasser" in any sense of the term. A suit by the lambardar to eject a co-sharer cannot, therefore, come under section 44 of the Act.

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*Sri Ram Chanderji v. Raghunath* (1), disapproved.

Messrs. *Waheed Ahmad Khan, M. A. Kazmi* and *Raj Bahadur Jaini*, for the appellants.

Mr. G. S. Pathak, for the respondents.

THOM, C.J., ALLSOP and GANGA NATH, JJ.:—This is a plaintiff's appeal arising out of a suit for ejectment and damages under section 44 of the Agra Tenancy Act.

The parties are co-sharers in a certain mahal, and the plaintiff claims to be the lambardar. He seeks to eject Muhammad Khan and Jalaluddin from certain plots which once, according to the averments of the parties, was a grove.

On the 13th September, 1934, Muhammad Khan sold his share in the mahal to the plaintiff, Sultan Ahmad Khan. He exempted from sale the aforementioned grove. In that grove as a co-sharer Muhammad Khan had a share along with the other co-sharers.

In 1935, according to the averments of the plaintiff, Muhammad Khan cut down the trees of the grove and then allowed the defendant Jalaluddin to enter into possession of the land. In these circumstances the plaintiff as lambardar and zamindar instituted the suit out of which this appeal arises for the ejectment of the defendants.

A number of questions have been raised during the hearing of this appeal, including the question of jurisdiction of the District Judge to entertain the appeal to his court. In the view we take of the case, however, it is not necessary to decide these questions.

In our judgment the suit is misconceived. According to the plaintiff's own averments Jalaluddin and Muhammad Khan defendants are both co-sharers. It is clear in our judgment that the plaintiff Sultan Ahmad Khan is

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not entitled to eject co-sharers under section 44 of the Agra Tenancy Act. Learned counsel for the plaintiff maintained that a suit for ejectment of a co-sharer was competent, and he relied on the decision of the revenue court in *Sri Ram Chanderji v. Raghunath* (1). In that case the Board of Revenue held that the lambardar of a village was a "landholder", as that term had been defined in the Agra Tenancy Act, and that he was entitled to eject a co-sharer as a trespasser. In the course of the judgment of the Board it was observed: "The lambardar is the 'landholder', and the section says that a person taking possession of land without the consent of the landholder and in contravention of the provisions of this Act shall be liable to ejectment."

"Landholder", however, has been defined in section 3 of the Agra Tenancy Act as "the person to whom rent is, or but for a contract, express or implied, would be payable". The rent of the particular plot in question is payable to the co-sharers of the mahal. It is not payable to the lambardar as lambardar. It is true that the lambardar is entitled to collect rents; but it is to the co-sharers that the rent is payable.

Under section 44 of the Agra Tenancy Act a trespasser may be ejected. In no sense of the term can the defendants in this suit be regarded as trespassers. They are both co-sharers. They are entitled to joint possession, at least, of the plots in question in the absence of any agreement with the other co-sharers. They cannot, therefore, be ejected under section 44. If one co-sharer is recalcitrant and takes possession of a particular plot in defiance of the wishes of the lambardar and the other co-sharers, their remedy is not by way of a suit for ejectment under section 44, but by way of a suit for joint possession or for partition.

In the result the appeal is dismissed with costs.

(1) (1929) 13 Rev. Dec. 426.