

1940  
 EMPEROR  
 v.  
 GANGA RAM

before he had himself recorded judgment of acquittal or of conviction in respect of the charge under section 435. We think that the proper thing, therefore, for us to do is now to stand over the present reference in this Court and to refer back to the Sessions Judge of Cawnpore the whole of the proceedings in order that a judgment of acquittal or of conviction, as the case may be, may be recorded upon the other charge in accordance with the provisions of section 307 of the Criminal Procedure Code. When that has been done, it will be possible for the proceedings to be returned to this Court and we shall then be in a position to deal with the present reference.

It will be convenient if steps are taken by the Registrar to ask the sessions court of Cawnpore to inform him when the other charges have been dealt with, in order that this reference may be restored to our list as soon as it is ready.

## APPELLATE CIVIL

*Before Justice Sir Edward Bennet and Mr. Justice Verma*

1940  
 January, 24

GAJRAJ SINGH AND ANOTHER (DEFENDANTS) *v.* KALLU  
 (PLAINTIFF)\*

*Agra Tenancy Act (Local Act III of 1926), sections 227, 266—  
 Suit for settlement of accounts and share of profits against a  
 collecting co-sharer—Defendant entitled to retain only his  
 proportionate share of the collections made by him—Extent  
 to which a co-sharer is entitled to collect from tenants.*

In a suit under section 227 of the Agra Tenancy Act, 1926, the defendant is not entitled to retain more than his proportionate share of the rent collected by him from each tenant.

Under section 266 of the Act a co-sharer cannot sue any tenant for the realisation of more than his own proportionate share of the rent due by the tenant, except in the case where there has been an assignment of particular tenants to parti-

\*Second Appeal No. 722 of 1937, from a decree of I. B. Mundle, District Judge of Bareilly, dated the 28th of January, 1937, confirming a decree of Malik Aijaz Wali Khan, Honorary Assistant Collector, First Class of Ily, dated the 10th of August, 1935.

cular co-sharers. Therefore, as a co-sharer is not entitled to sue any tenant for more than his own proportionate share. it follows that he is not legally entitled to collect more than his proportionate share from any tenant.

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

Mr. L. N. Gupta, for the respondent.

BENNET and VERMA, JJ. :—This is a second appeal by two defendants Gajraj Singh and Mst. Radha Kuar against concurring decrees in favour of the plaintiff of the two courts below. The suit was brought in the court of an Assistant Collector by one Kallu who was the owner of one biswa share in a certain patti. Three biswas share was owned by the appellants and Mst. Ram Devi, respondent No. 3. One biswa share was owned by Mst. Jwala Devi, respondent No. 2, who was lambardar. The plaintiff sued under section 227 of the Tenancy Act of 1926. Issue No. 2 was: “Whether any of the defendants had made collections beyond his legitimate share, and if so, to what extent?” The patwari made a statement of accounts and in accordance with that statement the court held that certain sums were due from the appellants to the plaintiff. It was not contended that the lambardar was entitled to collect the rent, nor was it contended that there was any local usage or special contract by which a co-sharer was entitled to receive separately his share of the rent payable by a tenant. The appellants appealed to the court below and no such point was raised by them in appeal. The lower appellate court held that each co-sharer is entitled to collect only his own share of the rent of a tenant and not the entire rent payable by a tenant. The ground taken in second appeal to this Court is that the court below is in error in this matter and that the appellants were entitled to collect the whole rent from any tenants from whom they could collect up to the amount to which they were entitled as a share of the profits of the patti. Learned counsel referred to section 266 of the Tenancy Act. That section pro-

1940

---

 GAJRAJ  
SINGH  
v.  
KALLU

1940

GAJRAJ  
SINGH  
v.  
KALLU

vides: "(1) Except as otherwise provided in section 265, 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. (2) Nothing in sub-section (1) shall affect any local usage or special contract by which a co-sharer in an undivided property is entitled to receive separately his share of the rent payable by a tenant. (3) When one of two or more co-sharers is not entitled to sue alone, and the remaining co-sharers refuse to join as plaintiffs in a suit for money recoverable by them jointly, such co-sharer may sue separately for his share, joining the remaining co-sharers as defendants." As there is no local usage or special contract the case would not come under sub-section (2), but the case would come under sub-section (3) if a suit for arrears of rent was brought by the appellants against any particular tenant. This sub-section shows that the appellants in such a case could only sue separately for their share and would have to join the remaining co-sharers as defendants. Had there been a custom coming under sub-section (2) it would not have been necessary for them to join the remaining co-sharers as defendants but otherwise the matter would have been the same. It is only in case there had been an assignment of certain tenants to the appellants that they could have collected the rent from those tenants in full. As the appellants were not entitled to sue for arrears of rent from any tenant to an extent of more than their own share, that is  $\frac{3}{5}$ th of rent, we are of opinion that they were legally entitled to collect only that amount from any tenant. Therefore their collection of the full rent from any tenant was in excess of their legal rights and the plaintiff is entitled to make a claim against appellants for such excess collection from each and every tenant from whom the appellants have collected in full or for more than their share.

This view of the law has been taken in a recent case, *Man Singh v. Baij Nath Sahai* (1), a ruling by a Bench of this Court. Learned counsel referred to *Kanhaiya Lal v. R. H. Skinner* (2). But that was an entirely different case where the lambardar alone could make collections and a co-sharer had made collections without any legal right.

For these reasons we dismiss this second appeal with costs.

1940

GAJRAJ  
SINGH  
v.  
KALLU

Before Justice Sir Edward Bennet and Mr. Justice Verma

BELO (DEFENDANT) v. PARBATI (PLAINTIFF) AND JAMNA  
(DEFENDANT)\*

1940

January, 26

*Hindu law—Woman's estate—No presumption that a Hindu woman must be holding a limited estate—Mortgage by Hindu woman—No question of legal necessity arises unless it is established that she has only a limited estate—Transfer of Property Act (IV of 1882), section 6(h)—Transfer for property in consideration of past cohabitation—Validity.*

In a suit upon a mortgage executed by a Hindu woman the question of whether the mortgage was invalid for want of legal necessity does not arise unless the party assailing the validity of the mortgage has established by clear evidence that the mortgagor was not a full owner but the holder of only a limited estate.

Past cohabitation is not an unlawful consideration, and an assignment of mortgagee rights to a woman in consideration of past cohabitation is valid.

Mr. M. L. Chaturvedi, for the appellant.

Mr. E. V. David, for the respondent.

BENNET and VERMA, JJ.:—This is an appeal by the first defendant. The suit was for sale on foot of a deed of simple mortgage executed by Mst. Munno in favour of Lachhman Das on 4th November, 1925. The mortgagee, Lachhman Das, assigned his mortgagee rights to the plaintiff, Mst. Parbati, on 5th February, 1930. The

\*Second Appeal No. 799 of 1937, from a decree of S. W. Alam, Additional Civil Judge of Muttra, dated the 20th of January, 1937, confirming a decree of F. A. Chisti, Munsif of Muttra, dated the 30th of May, 1935.

(1) I.L.R. [1939] All. 888.

(2) (1931) I.L.R. 54 All. 240.