

1882

HIRA LAL  
v.  
GANESH  
PRASAD.

which he has not accounted for, their Lordships are unable to construe the judgment in the sense in which the plaintiff seeks to have it construed. The more obvious interpretation of it seems to be the more limited one.

Under these circumstances, their Lordships are of opinion that the plaintiff has failed to prove his case; and they will therefore humbly advise Her Majesty that the judgment appealed against be affirmed, and that the appeal be dismissed with costs.

Solicitors for the Appellant: Messrs *Watkins and Lattey*.

Solicitors for the Respondents: Messrs *W. and A. Ranken Ford*.

### CIVIL JURISDICTION.

*Before Mr. Justice Straight and Mr. Justice Oldfield.*

WAZIR MUHAMMAD KHAN (PLAINTIFF) v. GAURI DAT AND ANOTHER  
(DEFENDANTS).\*

*Act XII of 1881 (N-W. P. Rent Act), s. 93 (g)—Suit for arrears of revenue—Jurisdiction.*

*Held* that a suit against a co-sharer and the transferees of his share for arrears of Government revenue which became due before such transfer, the plaintiff claiming as lambardar and as heir to the deceased lambardar during whose incumbency such arrears became due, was cognizable in the Revenue Courts. The principle laid down in *Bhikhan Khan v. Ratan Kuar* (1) followed.

THIS was a reference under s. 205 of Act XII of 1881 by the Collector of Saharanpur. The Collector stated the case as follows:—

“Wazir Muhammad Khan and others, styling themselves heirs of deceased lambardar Ilahi Bakhsh, and Wazir Muhammad Khan also styling himself lambardar, sued on the 13th September, 1881, Amanat Khan a co-sharer, and two other defendants, auction-purchasers of Amanat Khan’s rights in April, 1879, for arrears of revenue on account of kharif 1286 fasli paid by Ilahi Bakhsh when lambardar. Subsequently, saving Wazir Muhammad Khan, the other plaintiffs withdrew their claim, and the plaint stood in Wazir Muhammad Khan’s name alone. Wazir Muhammad Khan became

\* Misc. No. 12 of 1882.

(1) L. L. R., 1 All. 512.

lambardar in 1881. The year 1286 fasli may be considered as being the agricultural year beginning in July, 1878, and ending in June, 1879. The defendant Amanat Khan did not appear at all. The other two defendants defended the suit on the score that the same was not cognizable under s. 93 (g), Act XII of 1881, and even if cognizable, why should they be held liable for Amanat Khan's dues because they had purchased his property. The Tahsildar Assistant Collector decreed the claim against all three defendants.

“ The two auction-purchasers, defendants, appeal ; the ground in appeal being substantially the same as their defence before the lower Court, save that perhaps it is pleaded now more distinctly than before that the suit is one not cognizable by a Revenue but a Civil Court. It is clear that at the time the arrears of revenue due from Amanat Khan were paid by the then lambardar, the relation of lambardar and co-sharer did not exist between the present plaintiff and Amanat Khan. Any claim therefore that plaintiff can have against Amanat Khan, or the other defendants who have the purchased the latter's rights, for these dues would seem to be rather as heir to Ilahi Bakhsh than in his present capacity as lambardar.

“ I can find no precedents exactly to the point at issue. My attention has, however, been drawn to the following decisions—*Mata Deen v. Chundee Deen* (1) and *Bhikhan Khan v. Ratan Kuar* (2). These two decisions, though not exactly to the point at issue, have some bearing thereon, but such as they are, they are apparently antagonistic to each other. The question therefore as to whether the present suit should not have been instituted in the Civil rather than the Revenue Court is one of considerable difficulty, and involves a point of law which it appears to me is more proper for the decision of a Civil than a Revenue Court.”

Pandit *Ajudhia Nath*, for the plaintiff.

Pandit *Bishambhar Nath*, for the defendants.

The Court (STRAIGHT, J., and OLDFIELD, J.) made the following order:—

STRAIGHT, J.—We think that, adopting the principle laid down in the Full Bench decision of this Court in *Bhikhan Khan v. Ratan*

(1) N.-W. P. H. C. Rep., 1870, p. 54. (2) I. L. R. 1 ALL. 512.

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*Kuar* (1), the suit with respect to which our opinion is asked was cognizable by the Revenue Court, and was properly entertained by the second class Collector. Such being our view the Collector will proceed to hear and dispose of the appeal preferred to him.

## APPELLATE CIVIL.

1882  
April 20.

*Before Mr. Justice Straight and Mr. Justice Brodhurst.*

RASIK LAL (PLAINTIFF) v. GAJRAJ SINGH (DEFENDANT).\*

*Mortgage by conditional sale—Pre-emption—Limitation—Right to sue—Act XV of 1877 (Limitation Act), sch. ii, No. 120.*

The limitation for a suit to enforce a right of pre-emption in respect of a mortgage by conditional sale is that provided by No. 120, sch. ii of Act XV of 1877, that is to say, six years (*Nath Prasad v. Ram Paltan Ram* (2) followed); and where the mortgagee by conditional sale is not in possession under the mortgage, and after foreclosure has to sue for possession, the right to sue to enforce a right of pre-emption accrues when he obtains a decree for possession.

The plaintiff in this suit claimed to enforce a right of pre-emption in respect of a four pies share in a village called Kusmara, which had been transferred to the defendant Gajraj Singh by the defendant Mauji Lal by conditional sale. The facts of the case are sufficiently stated for the purposes of this report in the judgment of the High Court.

Mr. *Siraj-ud-din* and Pandit *Ajulkhia Nath*, for the appellant.

Mr. *Conlan* and Munshi *Hanuman Prasad*, for the respondent.

The judgment of the High Court (STRAIGHT, J. and BRODHURST, J.) was delivered by

STRAIGHT, J.—On the 14th January, 1868, Manji Lal, defendant No. 2 and uncle of the plaintiff-appellant, executed a conditional sale-deed of a four-pie share of mauza Kusmara to Gajraj Singh, defendant No. 1. On the 29th September, 1873, notice of foreclosure was issued, and the year of grace expired on the 29th September, 1874. On the 28th July, 1879, Gajraj Singh brought a suit

\* Second Appeal, No. 821 of 1881, from a decree of Major T. J. Quin, Deputy Commissioner of Jaloun, dated the 10th May, 1881, reversing a decree of Mirza Jafar Bakht, Extra Assistant Commissioner of Madhogarh, dated the 21st March, 1881.

(1) I. L. R., 1 All. 512.

(2) I. L. R., 4 All. 218.