Before Mr. Justice Gokaran Nath Misra.

HULAS (DEFENDANT-APPELLANT) *v.* BARKAT-UN-NISA BEGAM, RANI (PLAINTIFF-RESPONDENT).* 1926 *April*, 13.

Landlord and tenant—Suit by proprietor for possession of land lying in front of tenant's house (sahan darwaza)*—Proof of actual physical possession by landlord, necessity of—Adverse possession—Tenants' right to enjoyment of and to put up structures on open land in front of his house.*

Held, that it is a settled rule of law in Oudh that where a proprietor of a village is proved to be in rent-collecting possession thereof his possession over the lands situate in that village which bear the character of waste land, tank land and jungle land must be presumed.

Where a taluqdar brought a suit for possession of the land lying in front of the house occupied by a tenant called (*sahan darwaza*) which could be described as *parti* land, *held*, that it is not necessary for the plaintiff to prove her possession by proving actual acts of physical possession but she must be deemed to be in possession of those lands.

Where, therefore, a tenant is proved to be in possession of the land in front of his house in the sense that he has been enjoying it because it lies in front of his house, *held*, that an enjoyment of this character cannot be deemed to be adverse and his possession must be deemed to be that of a tenant.

Held further, that tenants residing in a village who are in the enjoyment of the land in front of their houses, the title of which was with the landlord, are not entitled, according to the custom prevailing in Oudh, to put up structures on the land wihout the consent of the landlord.

Held also, that if a tenant had been in possession of the plot of land as a tenant for more than twelve years he obtained right by such possession to remain in actual enjoyment of the land and the landlord could not deprive him of such enjoyment. [8 O.C., 177; 9 O.C., 33 and 14 I.C., 212, followed. 10 O.C., 284; 25 I.C., 59; I.L.R., 16 Bom., 338; 8

* Second Civil Appeal No. 286 of 1925, against the decree, dated the 20th of March, 1925, of Muhammad Hasan Khan, Subordinate Judge of Sitapur, reversing the decree, dated the 17th of October, 1924, of Ahmad Qasim Zaidi, Additional Munsif of Sitapur, dismissing the plaintiff's suit.

1926

HULAS v. BARKAT-UN-NISA BEGAM

I.C., 708; 21 Mad., 53; I.L.R., 33 Bom., 712 and 68 I.C., 263, referred to and relied upon.]

Mr. *K. S. Hajela*, for the appellant.

Mr. *Rauf Ahmad*, for the respondent.

MISRA, J.:—This is the defendant's appeal arising out of a suit for possession. The plaintiff, Rani Barkat-un-nissa Begam is the proprietor of Taluka Ant in which is situate the village Mundyara which contains the land in suit. The plaintiff came to the court on the allegation that the defendants are the two tenants residing in the village stated above and that they have recently made constructions of various character on the land in front of their houses without her permission. She, therefore, claimed possession of those plots of land and also asked for demolition of the newly constructed structures. The defence raised by the defendant No. 1, who alone contested the claim, was to the effect that the constructions complained of were more than twelve years old and that the plaintiff was not entitled to get them demolished, because the lands on which such constructions were made constituted the *sahan darwaza* (open spaces in front of house) of their houses. They pleaded limitation as a bar to the plaintiff's claim.

The learned Munsif of Sitapur who tried the case held that the constructions in dispute were not old constructions but had only been put up by the defendants two or three years before the institution of the suit, but the land in suit has been in the occupation of the defendants for more than twelve years and that the plaintiff had not established that she was in possession of this land within limitation. On these findings the learned Munsif dismissed the suit. The plaintiff taluqdar carried the matter further in appeal and the learned Subordinate Judge of Sitapur,

who heard the appeal, came to a different conclusion. He held that the character of the land was *parti* (waste) and must be treated to be in possession of the taluqdar, who was the proprietor of the village and it was not, under the circumstances, necessary for her to prove her possession of the land within limitation. He held also that the defendants were admittedly the tenants of the plaintiff and their possession of the plots in dispute which lay in front of their houses could not be treated as adverse. In that view of the case he decreed the plaintiff's suit for demolition of such of the structures as he held to be recent and also gave the plaintiff a decree for possession of the plots in dispute as held by her before. He, however, dismissed the plaintiff's suit for the demolition of such of the structures as he had found proved to have been built more than twelve years ago. The defendant No. 1 has now appealed to this Court and the learned Pleader for the appellant has contended in appeal that the appellant's possession over the plots in dispute should be held to have been adverse and that the plaintiff should not have been given a decree for demolition of the structures constructed by him on the plots in dispute. His argument was that the view taken by the trial court that the plaintiff ought to have proved her possession of the plots in dispute was a correct decision and should not have reversed by the learned Subordinate Judge in appeal. His last contention was that in any case his client should not be deprived of the possession of the land in suit, in as much as it was proved from the plaintiff-respondent's own evidence that the appellant had been in possession of the land for about 30 to 40 years.

As to the point that the plaintiff ought to have proved her possession of the land in suit within limitation and that the defendant-appellant had estab-

1926

HULAS v. BARKAT-UN-NISA BEGAM.

lished his adverse possession, I am of opinion that the contention raised by the learned Pleader for the appellant must be overruled. It is a settled rule of law in this part of the country that where a proprietor of a village is proved to be in rent-collecting possession thereof his possession over the lands situate in that village which bear the character of waste land, tank land and jungle land must be presumed. If this were not the case it would be almost impossible for a landlord to prove his possession over the lands of this character. In *Thakur Sheo Narain Singh* v. *Bodal Singh* (1), it was held that where a taluqdar sued for possession of waste land, tank land and jungle land situate in his taluqa the *primâ facie* evidence of his possession within twelve years anterior to the date of suit must be given, but in determining this question, evidence of the physical acts of enjoyment as user indicating possession was not necessary. The taluqdar's title having been established, his possession should be presumed to exist unless possession is taken by another person in an exclusive manner. The taluqdar was to be deemed in possession of such land without the actual user of it and the owner was not to be deemed to have been dispossessed of the land if trees were planted on the said land or if an act of otherwise trespassing on it had been committed. The same view was held in *Sheikh Mohammad Alam* v. *Raghuber Singh* (2), decided by CHAMIER, A. J. C. This rule of law has been consistently, so far as my knowledge goes, followed in the Province of Oudh and I am surprised to find that the learned Munsif took a contrary view of the matter. The land in suit admittedly lies in front of the house occupied by the defendants and they themselves call it as their *sahan darwaza* (open space lying in front of the house).

(1) (1905) 8 O.C., 177. (2) (1906) 9 O.C., 33.

1926

HULAS BAREAT-UN-NISA FEGAM.

The character of the land, it is clear, was the same as described in the above cases. I am, therefore, of opinion that it was not necessary for the plaintiff taluqdar to prove that she was in possession of the land in suit by proving actual acts of physical possession. She is admittedly the proprietor of the village and the lands are admittedly lands which can be described as *parti* and in the circumstances she must be deemed to be in possession of those lands.

As to the contention of the learned Pleader for the appellant that his client's possession of the land was of adverse character, I regret I cannot agree with it. The only thing that has been proved in the case is that the defendants have been in possession of the land in suit in the sense that they have been enjoying it because it lies in front of their houses and an enjoyment of this character cannot be deemed to be adverse. In the case of *Thakur Sheo Narain Singh* v. *Bodal Singh* (1), already referred to by me, it was held that in order to dispossess an owner the plaintiff in possession must show that he asserted clearly that he claimed the right to hold possession as owner or his conduct must be such as would amount to the assertion of the intention to exclude the actual owner. No such evidence has been given in the case. The appellant, as remarked by the learned Subordinate Judge, is admittedly a tenant of the plaintiff and his possession of the land must be deemed to be in that very capacity, unless it be shown by satisfactory evidence that it was of a contrary nature. In *Framjee Cursetjee* v. *Gokul Das Madhowji* (2), it was laid down that where a small piece of land which was of no present use to its owner and was convenient in many ways to a person having his house close to the land in suit to use it in various ways and he used

(1) (1905) 8 O.C., 177. (2) (1892) I.L.R., 16 Bom., 338.

1926

HULAS v. BARKAT-UN-NISA BEGAM.

it for such purposes for more than twelve years, such a user was insufficient to give a title to the land by adverse possession. This view of the law was also held in the late Court of the Judicial Commissioner of Oudh as will appear from the case reported in *Bechu* v. *Rani Lachchmi Kuar* (1), decided by LINDSAY, A. J. C. It was held in that case that structures of purely temporary nature made by a tenant for the convenience of his house did not constitute such an assertion of rights on the part of the tenant as would justify the conclusion that he meant by erecting such structure to set up a claim to the ownership of the soil and, therefore, be an evidence of adverse possession. So far as I am aware this has been the rule of law consistently followed in these Provinces. A similar view was taken in *Chokkelinga Naicken* v. *Muthusami Naicken* (2), in *Ganpatee* v. *Raghu Nath* (3), and in *Chandan* v. *Bahadur* (4), decided by the Lahore High Court. I am, there. satisfied that the possession of the defendant-appellant over the plot in dispute cannot, in any sense, be regarded as adverse. His possession must be deemed to be that of a tenant and in the end of the argument the learned Pleader for the appellant almost conceded that position.

It was next contended that even if the possession of the appellant in respect of the land in dispute was proved to have been merely in the capacity of a tenant, he had still a right to put up the structures complained of. I do not agree with that contention. In my opinion the tenants residing in a village who are in the enjoyment of the land in front of their houses, the title of which was with the landlord, are not entitled, according to the custom prevailing in

(1) (1910) 8 I.C., 708.
(2) (1898) I.L.R., 21 Mad., 53.
(3) (1909) I.L.R., 33 Bom., 712.
(4) (1922) 68 I. C., 263.

Oudh, to put up structures on the land without the consent of the landlord. It is one thing for a tenant to remain in enjoyment of the land as open space in front of his house and it is quite a different thing to put up structures on it or to enclose it by means of walls. The landlord may not object to his use of the open land situate in the *abadi* of a village, of which he happens to be the proprietor, but that would not give a right to the tenant to put up structures upon that piece of land and the landlord would be legitimately entitled to his remedy if he claimed it by coming to the court for a relief to the effect that the structures complained of may be demolished. It would be perfectly within his rights to claim such a relief and, in my opinion, such a relief should be given to him. I am supported in this view by a case decided by the Lahore High Court, reported in *Jagannath* v. *Gur Dayal Singh* (1), and by another case decided by the same Court and reported in *Chhatarpal Singh* v. *Gajadhar Upadhyay* (2). I, therefore, hold that the decree for the demolition of such structures in dispute as have been held by the learned Subordinate Judge to have been of recent date is a correct and proper decree and must be maintained.

There is, however, a further point which was urged by the learned Pleader for the appellant and it was to the effect that the defendant-appellant should not be deprived of the use of the land in suit as the land lying in front of his house and as his *sahan darwaza*. In my opinion this contention is quite correct. It has been proved by the three witnesses examined on behalf of the plaintiff, namely, Gauri P. W. 1, Bhaya Lal P. W. 2, and Zalim P. W. 3, that the land in suit has been in possession of the

(1) (10) I.C., 284. (2) (1914) 25 I.C., 59.

1926

HULAS v. BARKAT-UN-NISA BEGAM.

defendant-appellant for a period of over 30 years. This long enjoyment has undoubtedly given the appellant a right to retain the land in his possession for being enjoyed as such and in this view of mine I am supported by a decision of the Calcutta High Court, which was cited before me by the learned Pleader for the appellant and which is reported in *Gopal Krishna Jana* v. *Lakhi Ram Sardar* (1). This was a case decided by Sir LAWRENCE JENKINS, C. J. and N. CHATTERJEE, J., and it was held that if a tenant had been in possession of a plot of land as a tenant for more than twelve years, he obtained a right by such possession to remain in actual enjoyment of the land and the landlord could not deprive him of such enjoyment. I am in entire agreement with the principle laid down in this case and it appears to me to be clear from the evidence to which I have already referred that the defendant-appellant has been in enjoyment of the land in suit as his *sahan darwaza*. The land in dispute lies in front of the appellant's house and also of other tenants who have their houses close by. The plaintiff is, therefore, not entitled to eject the defendant-appellant from the possession of the land in suit by taking actual possession thereof.

I think that the learned Subordinate Judge when he said in his judgment that the plaintiff's claim should be decreed " for such possession of the plots in suit *as before*," he meant that the defendant was not to be dispossessed of the land in suit. I have, however, thought it proper that the matter should not be allowed to remain vague so that it may give rise to future disputes and I have, therefore, made it quite clear, in my judgment that teh plaintiff-respondent will not be entitled to take actual possession of the land in suit. She will, however, be deemed to be in

(1) 14 I.C., p. 212.

proprietary possession of the land and the defendant will have no right to put up any structures thereon without the express permission of the plaintiff.

I have virtually maintained the decree passed by the learned Subordinate Judge and, except a small modification which I have made as indicated in the above portion of my judgment, the decree passed by the Subordinate Judge shall stand. My order, therefore, is that this appeal, shall, subject to the modification indicated above, stand dismissed with costs.

Appeal dismissed.

Before Sir Louis Stuart, Knight, Chief Judge, and Mr. Justice Wazir Hasan.

MAHADEO PRASAD AND OTHERS (PLAINTIFFS-APPELLANTS) *v.* MUSAMMAT DHANRAJ KUNWAR AND OTHERS (DEFENDANTS-RESPONDENTS).*

1926 *April*, 13.

Hindu law—Alienations by widow to provide dowry for her daughter, reversioner's right to question—Dowry to a daughter having no brother, amount of.

Held, that in the case of a separated Hindu a widow is not only entitled but is bound in arranging for the marriage of a daughter who was unmarried at the time of the husband's death, to arrange as good a marriage as the father would have wished to arrange, had he been alive, and that she is justified in making substantial alienations of the family property for the benefit of the daughter, as according to the Hindu law the arranging of a suitable marriage for a daughter would confer religious benefit upon the deceased husband.

Held further, that the rules laid down in the Mitakshara to govern the dowry which should be given to unmarried sisters by their brothers cannot, in any way, be applied in the case of the marriage of unmarried girls who have no brothers. The reasonableness of the dowry can be decided on the circumstances of each particular case. [I. L. R., 45 All., 297, relied upon.]

* First Civil Appeal No. 15 of 1925, against the decree of Shyam Manohar Nath Shargha, Subordinate Judge of Gonda, dated the 30th of October, 1924.