

FULL BENCH.

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

CHITARKET SINGH (DEPENDANT-APPELLANT) v.
KANHAIYA BAKHSH SINGH (PLAINTIFF-RESPON-
DENT).*

1927
August, 8.

*Oudh Rent Act (XXII of 1886), section 108, clause (15)—
Negligence or misconduct of lambardar—Court's power
to decree profits on gross rental—Lambardar's duty to
keep accounts—Omission to keep accounts by lambardar,
effect of.*

Where negligence or misconduct has been proved it is open to the courts to pass a decree on the basis of demands. If a lambardar is proved to have been negligent or if he is proved to have misconducted himself, it is open to a court to decree to a co-sharer who claims a share of profits under section 108(15) of the Oudh Rent Act, 1886, not only the share of profits actually collected but the share of profits which has remained uncollected. [*Gajodhar Singh v. Barmhadat Singh* (1); followed.]

No lambardar is likely to perform his duties efficiently unless he keeps up accounts which are comprehensible to himself and to the co-sharers; and if he does not keep up such accounts, he is liable to suffer in law by his omission.

There are circumstances when, if the lambardar fails to fulfil this obligation, he can be made liable for the gross rental but it will always remain a question of fact whether his omission in failing to keep proper accounts affords proof of such misconduct or negligence as would justify a passing of a decree on the basis of demands, rather than on recorded collections. [*Shiv Dayal Singh v. Ram Narain and others* (2), followed.]

THIS case was originally heard by a Bench of two Judges (HASAN and KING, JJ.) who referred it to a full

*First Rent Appeal No. 36 of 1926, against the decree, dated the 15th of July, 1926, of Lakhshmi Shankar, Assistant Collector, First Class, Bahraich, decreeing plaintiff's suit.

(1) (1927) 1 Lucknow Cases, 27. (2) (1927) 4 O.W.N., 694.

Bench. Their order of reference, dated the 27th of April, 1927, runs as follows :—

HASAN and KING, JJ. :—This was a suit by a co-sharer against a lambardar for his share of profits under section 108, clause (15) of the Oudh Rent Act, 1886. The court below found that the defendant failed to produce his account books, and was grossly negligent in making collections, and has accordingly given the plaintiff a decree for his share of profits based on the rental demand and not on the actual collections.

In appeal the learned Counsel for the appellant has relied upon the ruling of a bench of this court in the case of *Fateh Narain Das v. Abdul Rahman* (1), as authority for the propositions (a) that the mere fact that a lambardar has been guilty of negligence in making collections furnishes no ground for passing a decree against him on the basis of the rental demand instead of upon the basis of actual collections, and (b) that profits cannot be decreed on the basis of the rental demand unless the court finds that the demand has, in fact, been collected in full. In the ruling referred to, a distinction has been drawn between the law in force in the Agra province, and the law in force in Oudh, regarding profits which have remained uncollected owing to the lambardar's negligence or misconduct. It is contended for the respondent that this ruling goes no further than to lay down the proposition that mere non-production of accounts by a lambardar is no proof of negligence in making collections. It is also contended for the respondent that, in spite of the absence in the Oudh Rent Act of a provision similar to section 164 of the Agra Tenancy Act, 1901 (corresponding to section 226 (2) of the Agra Tenancy Act, 1926) the same principle may be applied by the courts of Oudh.

The questions are of great importance and we are not satisfied as to the true interpretation of the ruling

(1) (1926) 3 O.W.N., 775.

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referred to. We, therefore, submit the following questions of law for the decision of a full Bench :—

- (1) Can a court decree to a co-sharer, who claims his share of profits from a lambardar under section 108, clause (15) of the Oudh Rent Act, 1886, not only his share of profits actually collected but also his share of the profits which have remained uncollected owing to the negligence or misconduct of the lambardar?
- (2) (a) Is a lambardar under a legal or an equitable obligation to maintain accounts of his collections and expenses of the joint estate?
- (b) If the answer to (a) is in the affirmative, then if the lambardar fails to fulfil the obligation, can he, when accounts are taken, in a suit under section 108, clause (15), be made liable for the gross rental.

In formulating our questions we have borne in mind the language of section 226(2) of the Agra Tenancy Act, 1926, and the last portion of section 76 of the Transfer of Property Act, 1882.

Mr. *M. Wasim* and Mr. *Ali Zaheer*, for the appellant.

Mr. *Ali Muhammad*, for the respondent.

STUART, C.J. :—This is a reference to a Full Bench of this Court under the provisions of section 14, Local Act IV of 1925. We have been asked to give answers to the following questions :—

- (1) Can a court decree to a co-sharer, who claims his share of profits from a lambardar under section 108, clause (15) of the Oudh Rent Act, 1886, not only his share of profits actually collected, but also his share of the

profits which have remained uncollected owing to the negligence or misconduct of the lambardar?

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- (2) (a) Is a lambardar under a legal or an equitable obligation to maintain accounts of his collections and expenses of the joint estate?

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- (b) If the answer to (a) is in the affirmative then if the lambardar fails to fulfil the obligation, can he, when accounts are taken, in a suit under section 108, clause (15), be made liable for the gross rental.

In respect of the first question I hold the view which I took previously in the decision of *Gajodhar Singh v. Barmhadat Singh* (1). I then held that where negligence or misconduct has been proved it is open to the courts to pass a decree on the basis of demands. If a lambardar is proved to have been negligent or if he is proved to have misconducted himself I consider that it is open to a court to decree to a co-sharer, who claims a share of profits under section 108, clause (15) of the Oudh Rent Act, 1886, not only the share of profits actually collected but the share of profits which has remained uncollected. This is my answer to the first question.

In reply to the first part of the second question, there is no statutory provision of the law which requires a lambardar to maintain accounts of collections and expenses. I agree, however, with the decision passed by my learned brother the Hon'ble Mr. Justice WAZIR HASAN in *Shiv Dayal Singh v. Ram Narain and others* (2) that the lambardar of a village is in a fiduciary position in relation to the co-sharer in the matter of collections and disbursements. He holds the position of a

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constructive trustee and he is bound to use such due diligence and care in the management of the estate as a man of ordinary prudence and vigilance would use in the management of his own affairs. Inasmuch as amongst the lambardar's duties are the duties of collecting the Government demand and paying the same promptly, the collection of rents, the division of profits and the disbursement of village expenses, it is difficult to see, in fact it is impossible to see, how he can perform these duties efficiently unless he maintains some sort of accounts. It is to be noted that these duties are remunerated by a commission which he is permitted to deduct from his collections. What form these accounts should take, how they should be maintained, it is not necessary to discuss here. But I am certainly of opinion that no lambardar is likely to perform his duties efficiently unless he keeps up accounts which are comprehensible to himself and to the co-sharers; and if he does not keep up such accounts, he is liable to suffer in law by his omission.

In answer to the second part of the question, there are circumstances when, if the lambardar fails to fulfil this obligation, he can be made liable for the gross rental but it will always remain a question of fact whether his omission in failing to keep proper accounts affords proof of such misconduct or negligence as would justify a passing of a decree on the basis of demands rather than on recorded collections.

RAZA J. :—I concur.

HASAN, J. :—I generally agree with the answers which the Hon'ble the CHIEF JUDGE has given to the reference under consideration. I, however, propose to state my reasons in full when the case goes back to the Bench of which I am a member for decision.

Reference disposed of.