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JADUNANDAN v. KING-EMPEROR.

For the reasons above stated, we allow the appeals of Jadunandan and Sarju and declare them to be acquitted, and we find Sheo Adhar and Nandu guilty of offences under section 323 of the Indian Penal Code, and reduce their sentences to one year's rigorous imprisonment each.

Hasan and Pullan, JJ.

Appeal partly allowed.

APPELLATE CIVIL.

Before Mr. Justice Gokaran Nath Misra.

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August, 5.

JODHA (DEFENDANT-APPELLANT) *v.* DARBARI LAL (PLAINTIFF-RESPONDENT).*

Oudh Rent Act (IV of 1921), section 48—Hindu law—Collaterals of a Hindu widow, who are—Widow, when can her collaterals be considered to be her heirs under section 48 of the Oudh Rent Act—Sub-tenant's tenancy comes to an end on principal tenant's death—Landlord, whether bound to issue notice of ejectment against sub-tenant on death of principal tenant.

A collateral of the husband of a Hindu widow must be deemed in Hindu law to be also her collateral.

If such a collateral did not share in the cultivation of the holding with her at the time of her death he cannot be considered to be her heir under section 48 of the Oudh Rent Act. [*Sheo Dutt* v. *Ram Manorath* (1), referred to.]

The tenancy of a sub-tenant comes to an end on the death of the principal tenant, and it is not necessary for the landlord to issue a notice of ejectment against the sub-tenant.

Mr. *Ram Bharosey Lal*, for the appellant.

Mr. *M. Wasim*, for the respondent.

MISRA, J. :—This is an appeal arising from a suit in which the plaintiff-respondent claimed possession of a certain holding situate in village Kundwara,

* Second Civil Appeal No. 221 of 1927, against the decree of Shēo Narain Tewari, First Subordinate Judge of Bahraich, dated the 9th of April, 1927, reversing the decree of Gauri Shankar Varma, Munsif of Bahraich, dated the 19th of January, 1927.

(1) (1926) 3 O.W.N., 1006 : Selected Decision of United Provinces Board of Revenue, No. 7 of 1926.

belonging to the Nanpâra estate. The allegations upon which the plaintiff came into court were that he had obtained a *patta* in regard to the land in dispute from the Nanpara estate after the death of one Musammat Kanchana, who was the previous tenant of the said land. The plaintiff also claimed a sum of Rs. 200 as damages.

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The defendant-appellant pleaded that the lease executed by the Nanpara estate in favour of the plaintiff was invalid, because Musammat Kanchana left both her own brother, called Jodha, and also her own husband's brother, called Sukhai, both of whom were her heirs and entitled to succeed to the said holding for five years under section 48(1) of the Oudh Rent Act (XXII of 1886), as amended by Act IV of 1921, and none of whom had been legally ejected by the Nanpara estate after the death of Musammat Kanchana. The defendant, it appears, held the land in suit as a sub-tenant of Musammat Kanchana, and therefore, he also pleaded that the plaintiff was not entitled to recover possession since no notice of ejectment had been issued against him either by Musammat Kanchana or by the Nanpara estate.

The learned Munsif of Bahraich, who tried the suit, held that the lease executed by the Nanpara estate in favour of the plaintiff was invalid, because the above mentioned Sukhai and Jodha (one of whom was the brother of her husband and the other was her own brother) were alive and as long as they had not completed a period of five years from the death of Musammat Kanchana, and had not been formally ejected by the Nanpara estate, the plaintiff's lease could not be considered to be valid. On this finding he dismissed the plaintiff's suit.

The plaintiff carried the matter further in appeal and the first Subordinate Judge of Bahraich

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differed from the learned Munsif and came to the conclusion that Musammat Kanchana had died heirless, neither Sukhai nor Jodha being her heirs within the meaning of section 48(2) of the Oudh Rent Act, since they did not at the time of the death of Musammat Kanchana, share with her in the cultivation of the holding. He, therefore, held that the lease executed by the Nanpara estate in favour of the plaintiff was a perfectly good lease and in that view of the case he decreed the plaintiff's suit and also awarded him the damages as claimed by him.

In second appeal two points have been urged before me, *firstly*, that the plaintiff was not entitled to possession, because no proceedings in ejectment had been taken against the defendant, *secondly*, that neither Sukhai nor Jodha could be deemed to be the collateral heirs of Musammat Kanchana, and it was not, therefore, necessary in their case that they should have, in order to be her heirs under section 48 of the Oudh Rent Act, shared in the cultivation of the holding with the deceased.

Regarding the first point I may point out that there is no force in that contention. The tenancy of a sub-tenant comes to an end on the death of the principal tenant, and it is not necessary for the landlord to issue a notice of ejectment against the sub-tenant. Indeed it would be extremely unjustifiable to hold that a landlord should be compelled to issue a notice of ejectment against a person, who is not *his own* tenant. It is clear that a sub-tenant is only a tenant of the principal tenant and not of the landlord. In that view of the case the sub-tenancy of the defendant-appellant came to an end after the death of Musammat Kanchana and he could not resist the plaintiff's suit on the ground that he had not himself been formally ejected either by Musammat Kanchana or by the

Nanpara estate. I, therefore, overrule the first contention.

Regarding the second contention I am equally clear that it has got no substance. Musammat Kanchana, it is admitted, was a statutory tenant of the land in suit and we have to determine whether she has left any heirs or not. In order to do so we must turn to find out who would be her *stridhan* heirs. Mr. Mullah in his well-known work on Hindu law (5th edition, 1926) gives the list of the heirs to the *stridhan* of a Hindu woman governed by the *Mitakshara* (vide page 147). The *stridhan* heirs are mentioned in the following order :—

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(1) Unmarried daughter.
(2) Married daughter who is unprovided for.
(3) Married daughter who is provided for.
(4) Daughter's daughter.
(5) Daughter's son.
(6) Son.
(7) Son's son.

It is further stated that if there be none of these, in other words, if the woman dies without leaving any issues her *stridhan*, if married in an approved form (regarding which there will be a presumption unless proved to the contrary), goes to her husband and after him to his heirs in order of their succession to him. On failure of the husband's heirs it goes to her blood relations in preference to the Crown.

It is proved from the evidence that Musammat Kanchana died without leaving any issue and the only persons, who would now be entitled to her property according to Hindu law, would be her husband's heirs. It is, therefore, clear that Sukhai, who is her husband's brother, would be her *stridhan* heir. But I have to see whether he is an heir also for the purposes of Oudh Rent Act. Under section 48(2) of the

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Oudh Rent Act it is provided that the collateral relative, who did not at the date of the death of the deceased share in the cultivation of the holding, was not to be deemed to be an heir of the deceased within the meaning of the section. I have, therefore, to see whether Sukhai, the brother of the husband of Musammat Kanchana, is her collateral relative and whether he shared in the cultivation of the holding with the deceased Musammat Kanchana on the date of her death.

As to the first point the learned Pleader for the appellant contended that in the case of a widow the words "a collateral relative" used in clause (2) of section 48 cannot be considered to include the collateral of her husband. I am surprised that such an argument has been put forward before me. It is clear to me beyond doubt that a collateral of the husband of a widow must be deemed, in Hindu law, to be also her own collateral. In Hindu law the husband and wife are treated as consisting of one body and on that theory the collateral heirs of the husband would also be the collateral heirs of the widow. Indeed, in common language, the husband's nephew is considered to be the nephew of his widow. I am backed in this opinion by a recent decision of the members of the Board of Revenue, reported in *Sheodutt* v. *Ram Manorath* (1). The case is also a selected decision of the Board of Revenue, being Selected Decision No. 7 of 1926. The case was decided by Mr. Burn, Senior Member and Mr. PIM, the Junior Member. The learned Members have held in that case that where a widow held a tenancy in her own right and the tenancy was heritable the collateral relatives of the husband of the widow must also be deemed to be collateral heirs of the widow under section 48(2) of the Oudh Rent Act.

(1) (1926) 3 O.W.N. 1006 : Selected Decision of United Provinces Board of Revenue, No. 7 of 1926.

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This conclusion would further appear to be clear if we look into the list of the heirs, which I have quoted above. The specified heirs, which have been quoted are either the issues of the woman or the issues of her issue and are, therefore, to be contrasted with the collateral heirs of her husband, who cannot in any sense be considered to be included within the word "issue" of the woman. I do not think it is necessary for me to deal with this point any further. As stated above, I have no hesitation in holding that the collateral heirs of the husband of a widow are the collateral heirs of the widow herself.

As to the second point whether such collateral heirs of the husband of the widow can be considered to be her heirs, if they did not on the date of the death of the deceased widow share in the cultivation of the holding, it appears to me to be obvious that they cannot. Indeed the words of the clause can bear no other interpretation. In the case decided by the Board of Revenue, which I have quoted above, the same view was held by the learned members of the Board. Any other conclusion, it appears to me, would lead to absurd results. If in the case of an ordinary Hindu tenant a collateral relative of his, who did not at the date of his death, share in the cultivation of the holding with him, cannot be considered to be his heir within the meaning of section 48, it would be absurd to hold that the same person after the death of the widow would be considered to be her heir in spite of the fact that he did not share in the cultivation of the holding with her at the time of her death.

I am, therefore, clearly of opinion that a collateral relative of the husband of a Hindu widow, who did not share in the cultivation of the holding with her at the time of her death, cannot be considered to

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be her heir within the meaning of section 48. It is admitted that neither Sukhai nor Jodha shared in the cultivation of the holding with Musammat Kanchana at the time of her death, consequently none of them can be considered to be her heirs within the meaning of section 48(2) of the Oudh Rent Act.

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In view of my findings already given it is undisputably clear that Musammat Kanchana died heirless within the meaning of section 48(2) of the Oudh Rent Act, and this being the case, the Nanpara estate had full right to lease the land to the plaintiff, and his lease cannot on any ground be held to be invalid.

I, therefore, hold that the judgment of the learned Subordinate Judge is correct and, therefore, dismiss the appeal with costs.

Appeal dismissed.

APPELLATE CIVIL.

Before Mr. Justice Gokaran Nath Misra.

1927
August, 9.

SHAH WAJIH-UD-DIN ASHRAF (PLAINTIFF-APPELLANT) *v.* SHAH AHMAD ASHRAF AND OTHERS (DEFENDANTS-RESPONDENTS).*

Mortgage—Co-mortgagor redeeming entire mortgage, becomes merely charge-holder and not mortgagee of other co-sharer's share—Other co-sharer's right to receive possession by paying his share of charge—Limitation Act (IX of 1908), Articles 148 and 144—Limitation for co-mortgagor's suit to recover possession from the redeeming co-mortgagor—Adverse possession of co-mortgagor, starting of—Mutation in favour of redeeming co-mortgagor, whether gives start to adverse possession.

A co-mortgagor redeeming the whole mortgage does not become a mortgagee of a portion redeemed belonging to the

* Second Civil Appeal No. 111 of 1927, against the decree of Ahmad Kareem, Additional Subordinate Judge of Fyzabad, dated the 22nd of December, 1926, reversing the decree, dated the 22nd of April, 1926, of Syed Hasan Irshad, dismissing the plaintiff's suit.