

There is no other question regarding which the parties are at issue, the mortgage in favour of the plaintiffs-appellants being admitted throughout.

We, therefore, set aside the decrees of the courts below and grant a decree to the plaintiffs-appellants that their suit, as brought, will stand decreed with costs in all three courts.

1928
 ABDUL
 WAHID
 KHAN
 v.
 SHEIKH ALI
 KHAN

Appeal allowed.

APPELLATE CIVIL.

Before Mr. Justice Gokaran Nath Misra.

SHEIKH MOHAMMAD ALI, (PLAINTIFF-APPELLANT)
 v. SHEIKH MUMTAZ ALI, (DEFENDANT-RESPONDENT).*

1928
 November, 9.

Heir of a deceased tenant obtaining certain rights from the landlord—Rights, whether acquired for his exclusive advantage or for the benefit of all the heirs of the deceased holder—Possession of the heir, whether on behalf of all the heirs of the deceased tenant—Other heirs of deceased, whether can claim partition.

Where certain plots came in the possession of a person as heir of the previous holder of those plots any rights obtained by him in respect of those plots while in such possession must be ascribed to the rights of the deceased holder whose heir he happened to be and any benefit derived by him must be considered as benefit derived by him not for his exclusive advantage but for all the heirs of the deceased holder and his possession must be considered not only on his behalf but on behalf of all the heirs and the other heirs can claim partition of those plots as co-sharers.

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

Mr. *Naimullah*, for the respondent.

*Second Civil Appeal No. 298 of 1928, against the decree of S. M. Ahmad Karim, Subordinate Judge of Sultanpur, dated the 23rd of May, 1928, setting aside the decree of Pandit Shyam Manohar Tewari, Munsif of Musafirkhana at Sultanpur, dated the 6th of February, 1928, decreeing the plaintiff's claim.

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MISRA, J. :—This is a plaintiff's appeal out of a suit for partition. The parties to the suit are brothers, sons of one Sheikh Amjad Ali, resident of village Nandaura, district Sultanpur. The plaintiff-appellant filed a suit for partition in respect of the property which had been inherited by them either from their father Amjad Ali or from their grand-uncle Ramzan Ali. The dispute in this appeal relates to certain plots of land situate in village Nandaura which have been proved to have been in possession of the aforesaid Ramzan Ali, who died in 1890 and after whose death the parties to the suit inherited it. These plots of land are nos. 161 old/196, new, old 187/1/new 219, old 187/2,/new 221, old 188/new 222, old 265/new 318, old 315/new 390, old 316/new 391, old 334/new 408, old 466/new 555, and old 541/new 657, which were recorded at the time of the regular settlement in the possession of Ramzan Ali himself free of rent and certain other numbers, which were:—old 163/new 198, old 183/new 216, and old 510/1/new 618, which were recorded in the cultivation of tenants but had subsequently come into the possession of Ramzan Ali. There were certain other numbers, namely, old 325/new 350, old 318/new 393, old 321/2/new 396, old 322/new 396, old 324/new 399, and old 321/1/new 400, which were recorded as *parti*. In 1915 the taluqdar of Kurwar, who is the owner of the village in which these plots of land are situate, instituted in the rent court a suit for resumption in respect of these plots. The suit was filed against the defendant-respondent Mumtaz Ali who then happened to be in possession of all these plots of land. On the 17th of September, 1915, a compromise was arrived at between the parties to this case under which tenancy rights were decreed in respect of three plots of land namely 198 (recent), 216 (recent) and 618 (recent) subject to the payment of an annual rent of Re. 1-4-0 and under-proprietary rights:

in respect of 196, 219, 221, 222, 318, 350, 390, 391, 393, 396, 397, 399, 400, 408, 555 and 657 on the payment of under-proprietary rent of Rs. 17-0-3. All the plots of land are now admittedly in possession of the defendant-respondent, and the plaintiff-appellant claimed a half share in them.

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The learned Munsif of Musafirkhana at Sultanpur who tried the suit held that the property was joint property of the parties and by his decree dated the 6th of February, 1928, decreed the plaintiff's suit for partition of a half share in respect of these plots.

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On appeal, however, a different view was taken by the learned Subordinate Judge of Sultanpur, who by his decree dated the 23rd of May, 1928, had dismissed the plaintiff's suit.

On appeal it is contended before me that the decision of the learned Subordinate Judge is wrong and that the plaintiff is entitled to a half share in the plots in suit. After hearing the parties I have come to the conclusion that the judgment of the learned Subordinate Judge is erroneous and cannot be upheld. I will now proceed to give my reasons for arriving at this conclusion.

It has not been contested before me that all these plots of land were in the possession of Ramzan Ali. Indeed this was admitted by the defendant-respondent in the resumption case (*vide* exhibit 2). It is also admitted before me that these plots of land came into the possession of the defendant-respondent as heir of Ramzan Ali. It, therefore, appears to me that if any right had been obtained by the defendant-respondent in respect of these plots of land by virtue of a compromise with the taluqdar, such rights must be ascribed to the rights of Ramzan Ali, whose heir he happens to be. If such be the position, as it must be, the benefit derived by Mumtaz Ali must be considered as benefit derived

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by him not for his exclusive advantage but for all the heirs of Ramzan Ali. When after his death the defendant-respondent came into possession of these plots of land, his possession must be considered not only on his own behalf but on behalf of all the heirs of Ramzan Ali. It is not necessary to cite authorities in support of the proposition since it has not been contested before me that both the plaintiff and the defendant being the heirs of Ramzan Ali will be deemed as co-sharers and the possession of one will be deemed to be the possession of the other. Under these circumstances if the defendant-respondent while in possession of the entire property derived any advantage by virtue of being in such possession, he could not appropriate that advantage exclusively for himself, but must be deemed in law to have derived it both for himself and his co-sharer. In this view of the case the defendant cannot now resist the plaintiff's claim for partition in respect of these plots.

I, therefore, set aside the decree of the learned Subordinate Judge and restore the decree of the learned Munsif. The plaintiff's suit will stand decreed with costs in all the three courts.

Appeal allowed.