

## APPELLATE CIVIL

Before Mr. Justice E. M. Nanavutty

MANNI LAL (DEFENDANT-APPELLANT) v. LAL BAHADUR  
PLAINTIFF-RESPONDENT)\*

1934  
February, 26

*Oudh Rent Act (XXII of 1886), sections 127 and 108(2)—Sale of zamindari reserving proprietary right in a grove—Partition of village—Vendee admitting vendor's title in the grove—Grove entered by mistake in vendee's patti in partition—Inaccurate record at partition, whether destroys title—Suit for ejectment and arrears of rent under section 127, whether lies.*

Where a person sells his share in a village reserving to himself the proprietary rights in a residential house and a grove and subsequently in a partition of the village at the instance of another co-sharer the vendee admits the vendor's title to the house and grove but by the mistake of the partition *amin* the grove is included on the vendee's *patti* and the vendor is shown as a tenant *bila tasfia* of the vendee, the framing of an inaccurate record at the partition will not destroy the title of the vendor in the grove and the latter cannot be deemed to be a person taking or retaining possession of the grove without title within the meaning of section 127 of the Oudh Rent Act and cannot be sued for ejectment and arrears of rent under that section. *Baij Nath Singh v. Arjun Singh* (1), referred to. *Hanoman Singh v. Ratan Singh* (2), distinguished. *Prag Prasad v. Sri Nath* (3), relied on.

Messrs. H. D. Chandra and Kanhaiya Lal Nigam, for the appellant.

Mr. A. P. Nigam, for the respondent.

NANAVUTTY, J. :—This is a defendant's appeal from a judgment of the learned District Judge of Unao confirming the judgment and decree of the Court of Syed Mohammad Mukhtar, Assistant Collector of the 1st class in the district of Unao, decreeing the plaintiff's suit, with costs, for arrears of rent under section 108 of the Oudh Rent Act read with section 127 of the same Act.

\*Second Rent Appeal No. 6 of 1933, against the decree of Saiyed Ali Hamid, District Judge of Unao, dated the 28th of October, 1932, upholding the decree of Saiyed Mohammad Mukhtar, Assistant Collector, 1st Class, Unao, dated the 17th of October, 1931.

(1) (1919) 7 O.L.J., 237.

(2) (1920) 7 O.L.J., 336.

(3) (1930) 8 O.W.N., 23.

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The facts leading up to the filing of the present suit are briefly as follows:

Babu Ram Charan the uncle of the defendant Babu Manni Lal was proprietor of certain zamindari shares in village Jaintipur in the district of Unao. On the 19th of February, 1881, Ram Charan sold to Rup Chand, the father of the plaintiff Babu Lal Bahadur 2 biswas, 5 biswansis, 14 kachwansis,  $5\frac{1}{2}$  unwansis shares in village Jaintipur for Rs.3,000. In that sale deed Babu Ram Charan reserved to himself the proprietary rights in a residential house and a grove numbered 1118. This house as well as the grove no. 1118 were thus exempted from the sale deed and remained the property of Babu Ram Charan. It is admitted that grove no. 1118 entered in the khasra of the first regular settlement corresponds to no. 1255 in the khasra of the second settlement and is the same as khasra no. 1332 of the third settlement which is now in force. The plot in suit entered in the plaint in respect of which arrears of rent are claimed by the plaintiff Babu Lal Bahadur is no. 1332, and this number is admitted by the learned counsel for the plaintiff-respondent to have been once the property of Babu Ram Charan, uncle of the defendant. In 1917 Ram Narain, another co-sharer of village Jaintipur applied for partition, and the partition came into effect on the 1st of July, 1928. In the course of these partition proceedings an application was made jointly by Shankar Prasad, uncle of the defendant Babu Manni Lal and by Lal Bahadur the plaintiff in the present suit, praying that in respect of the residential house and grove no. 1332 exempted from the operation of the sale deed of 1881 a separate sub-patti be formed in the name of Babu Manni Lal. This application, exhibit A2, is on the file and it was verified before the partition officer by Babu Lal Bahadur on the 22nd of December, 1926. The order passed on this application by the partition officer was that it should be filed and it appears that no further action was taken

thergon. The learned counsel for the plaintiff-respon-  
 dent invites my attention to exhibit 6 which is a copy  
 of an order dated the 4th of February, 1927, rejecting  
 the objection of a certain objector in the partition  
 proceedings. This document exhibit 6 does not  
 appear to have any connection with the application of  
 the 21st of December, 1926 (exhibit A2). The present  
 suit for arrears of rent was filed by Babu Lal Bahadur  
 in the Court of the Assistant Collector on the 24th of  
 July, 1931, and it was decreed by the trial court. In  
 appeal the learned District Judge of Unao upheld the  
 finding of the trial court and so the defendant Babu  
 Munni Lal has filed this second appeal challenging the  
 correctness of the judgments of the two lower courts.

The sole ground upon which the lower appellate  
 court rejected the contention of the defendant that he  
 was the proprietor of the land in suit is that under  
 section 233(k) of the Land Revenue Act the defendant-  
 appellant after the partition had been effected could not  
 be allowed to claim that he was owner of the plot in suit.  
 In my opinion this conclusion of the lower appellate  
 court cannot be sustained.

Section 233(k) of the Land Revenue Act merely lays  
 down that no person shall institute any suit or other  
 proceeding in the civil court with respect to any matter  
 relating to partition or union of mahals except as  
 provided in sections 111 and 112 of the said Act.

In the present case the defendant Babu Manni Lal  
 has not filed any suit in any civil court in respect of his  
 claim to be the owner of the plot in dispute, nor are  
 there any proceedings pending at present in any civil  
 court in respect of that land. It seems to me that section  
 233(k) of the Land Revenue Act has obviously no appli-  
 cability to the facts of the present case. In the present  
 case according to the facts which I have set forth above  
 Babu Lal Bahadur admitted in exhibit A2 the title of  
 Babu Manni Lal to be the owner of grove No. 1332 as  
 well as of the residential house which were both

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exempted from the sale-deed of 1881. There was no question of title in dispute between the parties to the present suit in the partition proceedings as regards the ownership of plot No. 1332 and no question of title was decided by the partition suit in respect of that plot. In fact Babu Lal Bahadur as well as Babu Manni Lal were in complete agreement that plot No. 1332 was in the ownership of the latter and should be shown in a separate sub-patti in the name of Babu Manni Lal. The partition officer somehow or other overlooked this request and did not form any sub-patti in respect of the residential house and grove No. 1332 in the name of Babu Manni Lal but by some mistake on the part of the partition *amin* grove No. 1332 was thrown in the patti of Babu Lal Bahadur, and Babu Manni Lal who was undoubtedly the owner of the grove was shown as a tenant *bila tasfia* of Babu Lal Bahadur.

The framing of an inaccurate record at the time of partition will not destroy the title of any person when the question of that title has not been decided by the partition officer on the merits. It was held in *Baij Nath Singh v. Arjun Singh* (1), that so long as nobody interfered with a man's possession and enjoyment of his share in a property the fact that his share was inaccurately recorded in the revenue papers did not affect his title to it.

In the present case the title of the defendant was admitted by the plaintiff himself before the partition officer as late as December, 1926. There was no adjudication by the partition officer of the title of Babu Manni Lal in respect of the grove now in suit, and Babu Manni Lal cannot be said to have lost his title to the grove simply because he was inaccurately shown as a tenant (*bila tasfia*) of the plaintiff Babu Lal Bahadur. The learned counsel for the plaintiff-respondent has relied upon a ruling reported in *Hanoman Singh and others v. Ratan Singh and others* (2), in which it was

(1) (1919) 7 O.L.J., 237.

(2) (1920) 7 O.L.J., 336.

held that a partition created a fresh title to the properties partitioned. This ruling has no applicability to the facts of the present case. The partition of village Jaintipur which came into effect on the 1st of July, 1928, did not confer any fresh title to the plaintiff Babu Lal Bahadur in respect of grove No. 1332 which the latter had himself admitted in the course of those partition proceedings to be the property of Babu Manni Lal.

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The present suit has been filed by Babu Lal Bahadur under clause (2) of section 108 of the Oudh Rent Act read with section 127 of the said Act. It seems to me that section 127 has no applicability to the admitted facts of the present case. Section 127 of the Act runs as follows:

“A person taking or retaining possession of land without being entitled to such possession may, at the option of the person entitled to eject him as a trespasser, be treated as a tenant, and shall . . .”

It is clear from the narrative of facts set forth above that Babu Manni Lal cannot be deemed to be a person taking or retaining possession of grove No. 1332 without being entitled to such possession. It is common ground that this grove was originally the zamindari of his uncle Babu Ram Charan and was admitted in exhibit A2 by Babu Lal Bahadur the plaintiff to be in the ownership of Babu Manni Lal. Such a person cannot be deemed to be a trespasser and cannot be treated as a tenant.

In *Prag Prasad v. Sri Nath and others* (1), it was held by a learned Judge of this Court that although partition proceedings cannot be challenged in the settlement Court, yet where the real dispute was as to title and there was no attempt to challenge the partition proceedings, a decree under section 127 of the Oudh Rent Act could not be passed. In that case the plaintiff was the purchaser of a zamindari share from the heirs of one Lalla and he claimed that the defendants who were the heirs of one Bansi Dhar were trespassers in respect of

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certain plots which had come into his possession by purchase. In that case the plaintiff took his stand on certain partition proceedings which were concluded in the year 1915 as does the plaintiff in the present suit in respect of the partition of village Jaintipur which came into effect on the 1st of July, 1928. It was held in the ruling cited above that the case was hardly one in which a decree should have been passed under section 127 of the Oudh Rent Act.

It seems to me that the present case is similar in all essentials with the case decided in *Prag Prasad v. Sri Nath* (1) by Mr. Justice Pullan, and I am clearly of opinion that the plaintiff Babu Lal Bahadur cannot treat the defendant Babu Manni Lal as a trespasser and sue for his ejectment and for arrears of rent from him.

For the reasons given above, I allow this appeal, set aside the judgments and decrees of the lower courts and dismiss the plaintiff's suit with costs in all courts.

*Appeal allowed.*

## APPELLATE CRIMINAL

*Before Mr. Justice E. M. Nanavutty and Mr. Justice  
Rachhpal Singh*

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BHAGAUTI (APPELLANT) v. KING-EMPEROR (COMPLAINANT-RESPONDENT)\*

*Indian Penal Code (Act XLV of 1860), section 302—Corpse recovered from the house of the accused during his absence in jail—Accused, whether can be called upon to explain the recovery of the corpse—Criminal Procedure Code (Act V of 1898), sections 161 and 540—Magistrate, whether justified in examining witnesses examined during investigation by police.*

Where in the case of a prosecution for murder under section 302 of the Indian Penal Code, the only fact that is proved is that the dead body of the deceased was recovered from the house of the accused, buried in one of the rooms inside his

\*Criminal Appeal No. 500 of 1933, against the order of S. Ali Hamid. Sessions Judge of Hardoi, dated the 8th of November, 1933.

(1) (1930) 8 O.W.N., 23.