

that any notice was sent to Bimla Prasad. We do not think that the heirs of Bhupat Singh are entitled to raise any objection of the invalidity of the attachment on the ground that no notice was sent to Bimla Prasad. In any case we have already pointed out that the validity of this attachment of the decree is not a matter of vital importance in this appeal, as the attachment relied upon is the previous attachment made on the 19th of March, 1930.

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INDRANI

King, C.J.
and Smith,
J.

We accordingly dismiss the appeal with costs.

Appeal dismissed.

APPELLATE CIVIL

Before Mr. Justice Bisheshwar Nath Srivastava

SURAJ PRASAD AND OTHERS (DEFENDANTS-APPELLANTS) v.
PANDIT SHANKER DAYAL (PLAINTIFF-RESPONDENT)*

1935
October 9

Oudh Rent Act (XXII of 1886), section 108(16)—Co-sharer selling his entire share reserving to himself some plots bila lagani—Vendor, whether proprietor or under-proprietor of plots reserved—Vendee, whether can sue him for arrears of revenue as a co-sharer.

Where a co-sharer sells his entire share with all the rights appurtenant thereto reserving to himself certain plots to be held 'bila lagani' and there is nothing in the context to justify the construction of the word *lagani* as meaning revenue, the rights reserved by the vendor in the excepted plots of land are those of an under-proprietor and not that of a full proprietor and the relationship between the vendor and vendee is not that of co-sharers, and a suit by the purchaser under section 108, clause (16) of the Oudh Rent Act for arrears of revenue is not maintainable. *Jadunandan Prasad v. Brij Bhukhan* (1), and *Tajammul Husain v. Raunak Ali* (2), referred to.

The entries in the revenue records are by no means conclusive. They only raise a presumption which is open to rebuttal.

*Second Rent Appeal No. 14 of 1934, against the decree of Mr. K. N. Wanchoo, I.C.S., District Judge of Rae Bareilly, dated the 21st of December, 1933, upholding the decree of Babu Sheo Narain Asthana, Assistant Collector, 1st class, of Rae Bareilly, dated the 25th of September, 1933.

(1) (1902) 5 O.C. 70.

(2) (1911) 15 O.C. 25.

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DAYAL

Messrs. *Ramapat Ram* and *P. N. Chowdhri*, holding brief of *Mr. Hyder Husain*, for the appellants.

Mr. Kedar Nath Tandon, for the respondent.

SRIVASTAVA, J.:—This is a second rent appeal arising out of a suit under section 108, clause (16) of the Oudh Rent Act.

The admitted facts of the case are that the predecessors of the defendants-appellants sold a 1 anna 9 pies 12 kirants share to the predecessors of the plaintiff-respondent by means of a sale deed, dated the 12th of April, 1901, reserving certain plots of sir land, groves, jungle and chari *bila lagani*. These excepted plots were not separately assessed to revenue at the time of sale but they were assessed to Rs.37-8-0 per annum at the last settlement. The plaintiff came into Court on the allegation that the defendants were the under-proprietors of the plots in suit but he treated them as full proprietors for the purpose of the present suit because their names were entered as full proprietors in the khewat. Thus treating them as co-sharers the plaintiff sued to recover the arrears of revenue for 1337 to 1340 Fasli which he claimed to have paid on behalf of the defendants. The suit was contested on several grounds, only two of which are material for the purpose of the appeal. These grounds relate to the status of the defendants-appellants and to their liability for payment of the revenue. As regards the question of status, the learned District Judge has held that the defendants being recorded as proprietors the entries in the revenue papers must be accepted as correct for the purpose of this suit. On the question of liability, the finding is that there was no provision in the sale deed exempting the defendants from liability for payment of revenue in case the plots were separately assessed to revenue in future. He has accordingly in agreement with the trial Court decreed the plaintiff's claim.

The entries in the revenue records are by no means conclusive. They only raise a presumption which is

open to rebuttal. In *Jadunandan Prasad v. Brij Bhukhan* (1) Mr. (afterwards Sir) Edward Chamier remarked that a settlement officer, acting under the Oudh Land Revenue Act, cannot, by making entries in the khewat or otherwise, convert a proprietary into an under-proprietary right or *vice versa*. It was further held in this case that the question whether the vendor in a case like the present remained proprietor of the plots retained in his possession or became under-proprietor thereof depends upon the terms of the deed and has to be decided upon the interpretation of its provisions. This case was followed by a learned Judge of the late Court of the Judicial Commissioner of Oudh in *Tajammul Husain v. Ramak Ali* (2). In this case a person made a sale of his share "*baistisnai sir 30 bigha kham nambar hai zail bila lagan*" and it was held that the description of the plots as *bila lagan* indicated that the vendor was not to remain in possession of the plots as full proprietor.

We have therefore to determine the status of the defendants on a proper interpretation of the terms of the sale deed, dated the 12th of April, 1901. It begins by saying that the vendors have transferred the whole of the 1 anna 9 pies 12 kirants share with all the rights appurtenant thereto. This is followed by the reservation in respect of certain plots of sir land, groves, jungle and chari which are all described as *bila lagani*. In the details given at the foot of the deed also, where the plots are specified, they are described as *bila lagani* in the heading. There is nothing else in the document which has any bearing on the question. No doubt it is true that in some cases where the context justified such a construction the word "*lagan*" has been construed as meaning revenue, but in the sale deed before me there is absolutely nothing in the context to justify such a construction. As I have just stated the sale deed begins

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(1) (1902) 5 O.C. 70.

(2) (1911) 15 O.C., 25.

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J.

by saying that the entire share had been sold with all the rights appurtenant to it. This seems to indicate that the intention was to transfer the full proprietary rights in the entire share. The sentence relating to reservation which follows describes the plots reserved as *bila lagani* and not as exempt from Government revenue. In the circumstances the use of the words "*bila lagani*" seems to me to indicate that the rights reserved in the said plots were of a subordinate character or in other words that were it not for the reservation the vendor would be liable to pay "*lagan*" in respect of the said plots. I am therefore of opinion that the correct construction to be placed upon the document is that the rights reserved by the vendors in the excepted plots of land are those of an under-proprietor and not that of a full proprietor. The result is that the relationship between the parties is not that of co-sharers, and the present suit under section 108, clause (16) is not maintainable.

In view of the conclusion reached by me above, it is not necessary to discuss the question of the defendants' liability for payment of revenue.

For the above reasons I allow the appeal, set aside the decree of the lower Court and dismiss the plaintiff's suit with costs throughout.

Appeal allowed.

APPELLATE CIVIL

Before Mr. Justice Ziaul Hasan

1935
August 23
SHEO DAS PANDEY (PLAINTIFF-APPELLANT) v. MUSAMMAT
RAM KALI (DEFENDANT-RESPONDENT)*

Injunction—Hindu widow's right to enjoy income of her husband's money deposits in Banks, etc.—Reversioner's right for injunction to restrain her from waste—Widow's renewal of

*Second Civil Appeal No. 71 of 1934, against the decree of Babu Gauri Shanker Varma, Subordinate Judge of Gonda, dated the 19th of February, 1934, upholding the decree of Babu Mahesh Chandra, Munsif of Gonda, dated the 31st of August, 1933.