

## FULL BENCH.

*Before Sir Louis Stuart, Knight, Chief Judge, Mr. Justice Wazir Hasan and Mr. Justice Gokaran Nath Misra.*

MOHAMMAD YAKUB KHAN (PLAINTIFF-APPELLANT) v. BHIKHARI AHIR (DEFENDANT-RESPONDENT).\*

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*Oudh Rent Act (XXII of 1886), section 126—Joint estate—Suit by lambardar for arrears of rent—Lambardar, whether authorized to recover and sue for arrears of rent as manager.*

*Held*, that in a joint estate or under-proprietary or other tenure, in which division of land has not been made among the sharers, the person who is entitled to exercise the powers conferred by the Act in regard to the recovery of the arrears of rent, is the manager appointed on behalf of all the sharers, if the sharers have appointed a manager. But if the sharers have not appointed a manager, it must be presumed that they have accepted the lambardar as their manager and authorized him to collect the rents. *Bhan Partab Sahi v. Manohar Lal* (1), followed, and *Hanuman Singh v. Ahmad Ali Khan* (2), dissented from.

THE case was originally heard by MISRA, J., who referred it to a Full Bench. His order of reference is as follows :—

MISRA, J. :—This appeal arises out of a suit for recovery of arrears of rent. The respondent is a tenant of the land in suit which is situate in Mohal Mohammad Yusuf in village Sidhauna, district Rae Bareli. Mohal Mohammad Yusuf is an undivided mohal and constitutes a joint estate the owners of which are Mohammad Yakub, the plaintiff-appellant, Musammam Azizunnisa and Mohammad Asghar. The plaintiff is admittedly the lambardar of the entire mohal in which the land in suit is situate.

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\*Second Rent Appeal No. 37 of 1927, against the decree of Shambhu Dayal, District Judge of Rae Bareli, dated the 1st of June, 1927, upholding the decree of Lakhpat Singh, Assistant Collector, 1st Class, Rae Bareli, dated the 27th of September, 1926.

(1) (1915) 18 O.C., 5.

(2) (1924) 11 O.L.J., 27 : s.c., S.D. 6 of 1922.

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The defendant contended that he was not liable to pay the rent since he had already paid it to Musammiat Azizunnisa, a co-sharer of the mohal. He also contended that the suit could not be maintained on the ground that under section 126, clause (1) of the Oudh Rent Act, the plaintiff alone was not entitled to sue for the arrears of rent.

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Both the courts below have dismissed the suit on the ground that the plaintiff, though a lambardar of the mohal, cannot be considered to be a manager authorized to collect rent of that mohal on behalf of all the co-sharers under the provisions of section 126, clause (1) of the Oudh Rent Act and thus entitled to maintain the present suit.

In second appeal two contentions have been raised on behalf of the plaintiff-appellant: *Firstly*, that the plaintiff being a lambardar of the entire mohal should be considered to be the manager of that mohal entitled to collect rent on behalf of all the co-sharers within the meaning of section 126, clause (1) of the said Act. *Secondly*, that even if it be held that the plaintiff alone was not entitled to maintain the suit, the courts below should not have dismissed it, but should have allowed the appellant an opportunity to implead the other co-sharers as defendants in the case.

I have heard arguments in this case at great length and it appears to me that the view taken by the courts below cannot be maintained. It was uniformly held by the late Court of the Judicial Commissioner of Oudh that a lambardar of a joint mohal was entitled to exercise powers under the Oudh Rent Act in regard to the recovery of arrears of rent on the ground that he should be deemed to be a manager authorized to collect rents on behalf of all the co-sharers within the meaning of section 126, clause (1) of the said Act. In *Bhan Partab Sahi v. Manohar Lal* (1), Mr. LINDSAY (now Mr. Justice

LINDSAY) held that a lambardar of a joint estate should be deemed to be the manager of the common lands appertaining to such estate entitled to collect rents, settle tenants, eject tenants, procure enhancement of rent and do all necessary acts relating to the management of the estate for the common benefit of all. The same view was taken by Mr. WAZIR HASAN, A. J. C. (now Mr. Justice WAZIR HASAN) in *Kunjan Lal v. Rukmangad Singh* (1). Again the same view was taken in respect of the Agra Tenancy Act by the Allahabad High Court in three cases : viz. *Gulzari Mal v. Jai Ram* (2), decided by a Full Bench of the said Court consisting of RICHARDS, C. J., BANARJI and TUDBALL, JJ; *Moiz Fatima Begam v. Ali Akbar* (3), decided by PIGGOTT and WALSH, JJ; and *Mohammad Abdulla Khan v. Kundan* (4), decided by MUKERJI, J.

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On behalf of the respondent, reliance was placed on a decision of the Board of Revenue in *Hanuman Singh v. Ahmad Ali Khan* (5). Reference is also made to paragraph 232 of the Manual of Revenue Department, published in 1924, where the duties of a lambardar in respect of collecting rents from tenants under section 194 of the Agra Tenancy Act of 1901 are stated to apply only to those mohals in which by custom or agreement the lambardar possesses these powers.

I have always been of opinion that a lambardar in Oudh has a right to exercise powers to collect rents, to eject tenants and all other powers as are stated in section 126, clause (1) of the Oudh Rent Act to be exercisable by a manager appointed by all the co-sharers for the purpose. A lambardar is appointed on the nomination of the co-sharers under section 45 of the United Provinces Land Revenue Act (III of 1901); and if his

(1) (1925) 87 I.C., 1013.

(2) (1914) I.L.R., 36 All., 441.

(3) (1920) I.L.R., 42 All., 414.

(4) (1925) 87 I.C., 197.

(5) (1924) 11 O.L.J., 27; s.c. S. D. 6 of 1922.

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appointment depends upon the nomination of the other co-sharers, he must be deemed to be virtually a manager appointed by them for exercising the powers mentioned in section 126, clause (1) of the Oudh Rent Act. This view has also been consistently held by the late Court of the Judicial Commissioner of Oudh as will appear from the decisions quoted above in the earlier part of this order. This view has also prevailed, as stated above, in the sister province of Agra. I am not prepared to agree with the decision of the Honourable Members of the Board of Revenue reported in 11 Oudh Law Journal, page 27. As this question is of great general importance, it is, in my opinion, expedient that an authoritative decision of this Court should be arrived at on this point. I, therefore, refer the following question of law for the decision of a Full Bench of this Court, under section 14, clause (1) of the Oudh Courts Act (IV of 1925) :—

“Can a lambardar appointed with the consent of all the co-sharers in a joint estate, be deemed to be a manager authorized to collect rents on their behalf within the meaning of section 126, clause (1) of the Oudh Rent Act (XII of 1886)?”

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Mr. *Naimullah*, for the appellant.

Mr. *Ganesh Prasad*, for the respondent.

STUART, C.J. :—This is a reference under section 14, clause (1) of the Oudh Courts Act (IV of 1925) made to a Full Bench by a learned Judge of this Court. The question for decision is as follows. Mohammad Yakub Khan is the lambardar of a joint estate in Oudh. In this joint estate there are three sharers, including himself. He has sued a certain Bhikhari for arrears of rent. Bhikhari took two pleas : The first plea was that under the provisions of section 126 of the Oudh Rent Act

(XXII of 1886) Mohammad Yakub had no right to sue him as he was not a manager authorized to collect the rents on behalf of all the co-sharers. The second plea was that he had already paid his rent in good faith to another of the co-sharers. We are not concerned with this second plea, which can still be argued when the appeal goes back for hearing. The only plea with which we are concerned is the first plea. Section 126, (Act XXII of 1886) makes a distinction between joint estates or under-proprietary or other tenures in which division of land has not been made amongst the sharers, and *pattidari* estates or tenures. In the first class of estates the powers conferred by the Act in regard to the recovery of arrears of rent (that is the only power with which I am concerned here) shall not be exercised otherwise than through a manager authorized to collect the rents on behalf of all the sharers. In the second class of estates it is laid down distinctly that those powers shall be exercised either through the lambardar or through the *pattidar* who is entitled to collect the rents of the *patti*. The question which has now arisen before us had arisen in 1914 and it was decided in the Judicial Commissioner's Court by Mr. LINDSAY, who was then Judicial Commissioner, in *Bhan Partab Sahi v. Manohar Lal* (1). Mr. LINDSAY was dealing there, as we are dealing here, with a joint estate in which division of land had not been made among the sharers and he decided that in an estate such as that the manager referred to must be considered to be the lambardar and that the lambardar alone was entitled to sue for arrears of rent. This view has never been controverted in the Court of the Judicial Commissioner or in this Court up till the present time. I accept the view generally, but it appears to me that Mr. LINDSAY might have stated his conclusion somewhat differently. I am in complete accord with his general view, but I

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should state the conclusion as follows. In a joint estate or under-proprietary or other tenure in which division of land has not been made among the sharers, the person, who is entitled to exercise the powers conferred by the Act in regard to the recovery of the arrears of rent, is the manager appointed on behalf of all the sharers, if the sharers have appointed a manager. But if the sharers have not appointed a manager it must be presumed that they have accepted the lambardar as their manager and authorized him to collect the rents. The reason why, in my opinion, the Legislature has not referred in this portion of the section to the lambardar by name is because it occasionally happens that in an estate of this nature there is more than one lambardar; and it may further happen that the sharers have preferred to appoint as their manager a person other than the lambardar. We should not have had to arrive at a decision in this matter if there had not been a decision of the Board of Revenue which has dissented definitely from Mr. LINDSAY'S views and in so doing has dissented from the views invariably taken both in the Judicial Commissioner's Court and in this Court. That decision will be found in *Hanuman Singh v. Raja Saiyed Ahmad Ali Khan* (1) and is Selected Decision 6 of 1922. It was a decision of Mr. HOPKINS the Senior Member of the Board and Mr. FREMANTLE the Junior Member of the Board. At page 36 in the Oudh Law Journal Report Mr. HOPKINS, referring to Mr. LINDSAY'S decision, has said: "If the Legislature had intended that the power mentioned in sub-section (1) should be exercised by the lambardar, it could have said so. The clear inference is that the words actually used 'A manager authorized to collect the rents on behalf of all the sharers are not synonymous with lambardar'." I take no exception to the last sentence. I have already stated that in my opinion the words are not synonymous

with lambardar, for it is possible to appoint a manager other than the lambardar; but the criticism in no way affects the general soundness of the principle laid down by Mr. LINDSAY. If accepted, it would involve consequences of a somewhat extraordinary nature. According to the view taken by Mr. HOPKINS unless the sharers have appointed a manager to collect the rents no one can collect the rent through the court; and if the lambardar has no right to collect through the court, he has no right to collect otherwise. Thus in estates in which the sharers have omitted to appoint a manager, no rent could be collected. This certainly appears condemned as an impossible proposition. The lambardar is responsible for the payment of the land revenue; and unless he can collect the rents or has arranged with somebody else to collect on his behalf, it is difficult to see how he can pay it. It would certainly be open to sharers in such an estate to select one of their number as manager to collect the rents and for that manager to pay over to the lambardar such portion of the rents as was required to pay the land revenue; but the proposition laid down in the Selected Decisions of the Board of Revenue ignores the situation which could easily arise in which the sharers have not appointed such a manager. According to Mr. LINDSAY'S view such a situation could not arise. I have no hesitation in expressing my dissent from the view taken in the Selected Decision in question. I should accordingly answer the reference in the affirmative.

HASAN, J. :—I agree.

MISRA, J. :—I am also of the same opinion.

BY THE COURT :—The reference is answered in the affirmative accordingly.

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