APPELLATE CIVIL.

Before Mr. Justice Gokaran Nath Misra.

RAM DAT AND ANOTHER (PLAINTIFFS-APPELLANTS) *v.* CHHOTAK AND OTHERS (DEFENDANTS-RESPONDENTS.)* 1927 *October*, 14.

Manager's power of granting perpetual lease to plant grove—Manager, powers of—Co-sharer granting unauthorized lease, relief to be granted against—estoppel, essential elements of—Plea of estoppel, when maintainable.

The mere fact that a person manages the property belonging to another does not clothe him with authority to grant leases of land for the purpose of planting groves. The ordinary incidence of management would include the power to realize rent and power to give ordinary leases of land to tenants for the purpose of cultivation, but not the power to grant perpetual leases for the purpose of planting groves. Land cannot be let by a manager for the purpose of planting a grove thereon without the express permission of the principal.

Where a co-sharer grants a perpetual lease of land for planting a grove on his own behalf and as a manager on behalf of another co-sharer and the lease in regard to the latter's share is declared unauthorized and invalid, the fair arrangement would be to allow the lessee to remain in possession of the land on which he plants a grove and to ask him to pay to the co-sharer in regard to whose share the lease is declared invalid, his share of rent of the land and to allow the burden of transfer made by the other co-sharer to fall upon his share at the time of partition.

Unless a person is found guilty of either an overt act or of an act of omission which is likely to induce the other side to believe that he is entitled to commit the particular act complained of, there can be no question of estoppel. A plea of estoppel in such case can only be maintained if the conduct of the person against whom the estoppel is alleged, is found to be fraudulent. [*Beni Ram* v. *Kundan Lal* (1), *Mohori Bibee* v. *Dharmodas Ghose* (2), and *Mustafa Husain* v. *Saidul Nisa* (3), followed.

*Second Civil Appeal No. 222 of 1927, against the decree of M. Mahmud Hasan Khan, Subordinate Judge of Sitapur, dated the 11th of March, 1927.

(1) (1906) I.L.R., 21 All., 496. (2) (1903) I.L.R., 30 Calc., 539.
(3) (1926) 3 O.W.N., 282.

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Mr. *Khaliquzzaman*, for the appellants.

Mr. *S. M. Ahmad*, for the respondents.

MISRA, J. :—This appeal arises out of a suit for possession of 1 bigha, 14 biswas land in village Sheopuri, district Sitapur, by uprooting trees and for damages. The facts alleged by the plaintiffs are that the land in dispute is the joint land belonging to plaintiff No. 1, Ram Dat, plaintiff No. 2, Ram Ghulam and defendants Nos. 2 and 3 Bhagwati Prasad and Ram Autar, respectively; that the said defendants wrongfully gave a lease of the said land to defendant No. 1, Chhotak, for planting a grove thereon without their consent; and that the plaintiffs are, therefore, entitled to recover possession of the land by uprooting trees planted by defendant No. 1 thereon. The plaintiffs also claimed a sum of Rs. 50 as damages.

The defence put forward by defendant No. 1 was to the effect that defendants Nos. 2 and 3 managed the share of the village in which the land in dispute lies on behalf of the plaintiffs and, therefore, the lease granted by defendants Nos. 2 and 3 was a good and valid lease binding on them. It was also contended by him that the plaintiffs were estopped from claiming possession of the land in suit since they had not objected to defendant No. 1's planting trees on the land in dispute when he had obtained the lease of the said land. Defendants Nos. 2 and 3 admitted the fact of having given the lease of the land in suit to defendant No. 1, but alleged that while giving the lease they had told him that he must obtain the consent of the plaintiffs in respect of their share.

The learned Munsif of Biswan, district Sitapur, who tried the case held that the defendants Nos. 2 and 3 used to manage the share of the plaintiffs in the village Sheopuri and were, therefore, justified in giving the lease of the land for the purpose of planting a grove thereon.

He, however, held that the plea of estoppel could not be maintained. In this view of the case he dismissed the plaintiff's suit.

In appeal the learned Subordinate Judge of Sitapur agreed with the learned Munsif's finding that defendants Nos. 2 and 3 used to manage the share of the village in which the land in dispute lies on behalf of the plaintiffs and that they were, therefore, competent to grant the alleged lease to defendant No. 1. He, however, differed from the Munsif on the question of estoppel and held that the plaintiffs not having objected to defendant No. 1's planting the trees at the time when the lease was granted to him were not estopped from bringing the present suit. Upon these findings he confirmed the decree passed by the learned Munsif and dismissed the appeal.

Misra, J.

The plaintiffs have now come up to this Court in second appeal, and the learned Pleader on their behalf has urged two points in support of the appeal: Firstly, that there is no proof on the record that the plaintiffs had authorized defendants Nos. 2 and 3 to grant a lease of the land in dispute for the purpose of planting a grove and that the mere fact that the said defendants managed the property on the plaintiffs' behalf would not be a sufficient ground in law to give them an authority to grant a lease of the land for the purpose of planting a grove thereon. Secondly, that the finding of the learned Subordinate Judge on the question of estoppel was erroneous.

As to the first point I am of opinion that the contention urged on behalf of the appellants is sound and must be given effect to. I do not find any evidence on the record showing that the plaintiffs had expressly authorized defendants Nos. 2 and 3 to give a lease of the land in suit on their behalf for the purpose of planting a grove thereon. The courts below, it appears to me, have

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inferred this authority from the fact that defendants Nos. 2 and 3 used to manage the property on the plaintiffs' behalf and also from the fact that the plaintiffs did not object to the planting of the trees at the time when the alleged lease of the land in dispute was given to defendant No. 1. I do not agree with this view of the court below. In my opinion the mere fact that a person manages the property belonging to another does not clothe him with authority to grant leases of land for the purpose of planting groves. The ordinary incidence of management would include the power to realize rent and power to give ordinary leases of land to tenants for the purpose of cultivation. I am unable to agree with the view taken by the courts below that the power of management also includes the power to grant perpetual leases for the purpose of planting groves. It has been held in several cases that a *lambardar* has no power to grant a perpetual lease on behalf of his co-sharer, and I am, therefore, inclined to think that land cannot similarly be let by a manager for the purpose of planting a grove thereon without the express permission of the principal. Plaintiff No. 1 further gave his own evidence to the effect that when defendant No. 1 proceeded to plant trees on the land in dispute he at once objected. His story has not, however, been believed by the courts below. Apart from that fact it appears to me that even if we assume that plaintiffs did not object to defendant No. 1's planting trees on the land in suit at the time of the grant of the lease, that would not be any evidence of the fact that they had authorized defendants Nos. 2 and 3 to give such a lease on their behalf. There being no presumption that the authority to manage would also imply the authority to give lands for the purpose of planting groves, it was the bounden duty of defendant No. 1 to give clear proof of such authority. There being no such proof I am unable to infer such authority from the

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facts proved in the case. I, therefore, hold that defendants Nos. 2 and 3 had no authority to give defendant No. 1 the lease of the land in dispute for the purpose of planting a grove thereon.

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As to the second point, I am of opinion that the plea of estoppel cannot be maintained. The law on the subject is laid down very clearly by their Lordships of the Privy Council in *Beni Ram v. Kundan Lal* (1) and *Mohori Bibee* v. *Dharmodas Ghose* (2). The principle enunciated by their Lordships in those cases is that unless a person is found guilty of either an overt act or of an act of omission which is likely to induce the other side to believe that he is entitled to commit the particular act complained of, there can be no question of estoppel. In one of the cases recently decided by a learned Judge of this Court in *Mustafa Husain* v. *Saidul Nisa* (3), it was held that a plea of estoppel in such cases can only be maintained if the conduct of the person against whom the estoppel is alleged, is found to be fraudulent. I am unable to find such elements proved in the case. I, therefore, over-rule the plea of estoppel.

It now remains to be seen whether on the above findings the plaintiffs are entitled to a decree for possession. At the last hearing of the case after I had heard arguments on both sides I intimated to the parties that I had come to the conclusion that the fair arrangement which should be arrived at in this case would be to allow defendant No. 1, Chhotak to remain in possession of the land in dispute on which he has already planted a grove and to ask him to pay to plaintiffs Nos. 1 and 2 their share of rent of the land and to allow the burden of the transfer made by defendants Nos. 2 and 3 to fall upon their share at the time of partition. The plaintiffs not having come to court at once and the land being a joint one I intimated to the parties my opinion that they must seek their remedy at the time of partition. To this

(1) (1906) I.L.R., 21 All., 496. (2) (1903) I.L.R., 30 Calc., 539.
(3) (1926) 3 O.W.N., 282, Supplement.

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arrangement the parties agreed. In view of such agreement I thought it proper that I should myself determine the amount of rent which defendant No. 1 should pay to the plaintiffs for the use of the land in dispute. With this object I ordered the patwari of the village to be summoned before the court. The evidence of the patwari was recorded and after he had been examined the learned Pleader for the plaintiffs and the learned Counsel for defendant No. 1 agreed that the fair and equitable rent for the land in suit would be at the rate of Rs. 3 per *pakka* bigha. The land in dispute consists of four plots, namely, No. 701/1 (11 biswas), No. 701/2 (10 biswas) and No. 702/1 (3 biswas), all measuring 24 biswas; and No. 708/2 (10 biswas). The share of plaintiff No. 1 in the first three plots is one-third and the share of plaintiff No. 2 in them is one-sixth; and the share of plaintiff No. 2 in the fourth plot is 5/18ths there being no share of plaintiff No. 1 in the said plot. Calculating the rent at the aforesaid rate the share of plaintiff No. 1 comes to Rs. 1-3-0, odd but for facility of account I fix the rent at Rs. 1-4-0. The share of plaintiff No. 2 comes to about Re. 1, but for facility of account I fix it exactly at Re. 1. Defendant No. 1 will, therefore, pay Rs. 2-4-0 on account of rent of the land in dispute in this way that he will pay Rs. 1-4 to plaintiff No. 1 and Re. 1 to plaintiff No. 2. Defendant No. 1 will be allowed to remain in possession of the plots entered in the lease which include the plots in suit as long as he continues to pay the said rent. If at any time he fails to pay the rent to plaintiffs Nos. 1 and 2 he will be liable to ejectment from the land in suit to the extent of their shares. The plaintiffs Nos. 1 and 2 will also be entitled to get a decree for Rs. 5 as damages.

I, therefore, allow the appeal to the extent indicated above. As to costs my order is that owing to the circumstances in the case the parties should bear their own costs throughout.

Appeal partly allowed.