

REVISIONAL CIVIL

Before Mr. Justice Bisheshwar Nath Srivastava, Chief
Judge and Mr. Justice Ziaul Hasan

1936
July 20

PANDIT HARBANS LAL (PLAINTIFF) v. MUSAMMAT
DHIRAJA KUER (DEFENDANT)*

*Oudh Rent Act (XXII of 1886), section 108(16)—Jurisdiction—
Suit for arrears of rent by lambardar of pukhtadari village,
whether cognizable by Revenue Court—United Provinces
Land Revenue Act (III of 1901), section 4(3)—Under-pro-
prietary or pukhtadari mahal—Lambardar must be under-
proprietor or pukhtadar in a mahal where all co-sharers are
under-proprietors or pukhtadars.*

A suit by the lambardar of a *pukhtadari* village for arrears of rent alleged to be payable through him by the defendant is covered by the provisions of section 108, clause 16 of the Oudh Rent Act and is, as such, cognizable by the Revenue Court. Suits under clause (16) are not confined to suits for arrears of Government revenue payable through lambardar by persons who are superior proprietors. *Sidha Nath v. Sheo Dayal*, (1) referred to.

In the case of an under-proprietary or *pukhtadari mahal*, where all the co-sharers are under-proprietors or *pukhtadars*, the lambardar must be an under-proprietor or *pukhtadar*. There is nothing in the definition of lambardar to confine its application to a superior proprietor.

Mr. K. P. Misra, for the plaintiff.

Mr. Hargovind Dayal, for the defendant.

SRIVASTAVA, C.J. and ZIAUL HASAN, J.:—This is a reference by Mr. R. N. Singh, Assistant Collector of the first class, district Unao, under section 124A of the Oudh Rent Act.

The facts which have given rise to the reference are that village Kiratpur is a *pukhtadari* village of which the plaintiff is the lambardar. He brought a suit for arrears of *pukhtadari* rent alleged to be payable through him by the defendant. One of the pleas raised in

*Civil Reference (Under Oudh Rent Act) No. 5 of 1935, made by Mr. R. N. Singh, Assistant Collector, First Class of Unao District.

defence was that the suit was not cognizable by the Revenue Court. The learned Assistant Collector was in doubt as to the correct forum for the institution of such suits and has accordingly made the reference.

We are of opinion that the suit is clearly covered by the provisions of section 108, clause (16) of the Oudh Rent Act and is, as such, cognizable by the Revenue Courts. The material terms of this clause are as follows:

“Suit by a lambardar . . . for arrears of . . . rent payable through him by the co-sharers whom he represents . . .”

The *wajib-ul-arz* of the village shows that it is a *pukhtadari* mahal of which one of the *pukhtadars* is appointed lambardar. It is stated in the order of reference, and is not disputed before us, that the plaintiff is recorded as a lambardar in the village records. The argument that the word “lambardar” as used in clause (16) is applicable only to a superior proprietor appears to us to be quite fallacious. The definition of lambardar given in section 4, clause (3) of the U. P. Land Revenue Act is as follows:

“ ‘Lambardar’ means a co-sharer of a mahal appointed under this Act to represent all or any of the co-sharers in that mahal.”

There is nothing in the terms of this definition to confine its application to a superior proprietor. It seems to us clear beyond all doubt that in the case of an under-proprietary or *pukhtadari* mahal, where all the co-sharers are under-proprietors or *pukhtadars* the lambardar must be an under-proprietor or *pukhtadar*. Further the use of the words “rent payable through him by the co-sharers whom he represents” in clause (16) seems to clinch the matter. These words would become absolutely meaningless if suits under clause (16) were confined to suits for arrears of Government revenue payable through the lambardar

1936

PANDIT
HARBANS
LAL
v.
MUSAMMAT
DHIRAJA
KUER

Srivastava,
C.J. and
Zia I Haan,
J.

1936

PANDIT
HARBANS
LAL
v.
MUSAMMAT
DHIRAJA
KURR

by the persons who are superior proprietors. The use of the words just quoted leaves no doubt that the clause expressly contemplates suits of the nature of the present one in which the claim is made not for arrears of revenue but for arrears of rent payable by the under-proprietor co-sharers.

Srivastava,
G.J. and
Ziaul Hasan,
J.

Reliance has been placed on a decision of the late Judicial Commissioner's Court of Oudh in *Sidha Nath v. Sheo Dayal* (1). The following observations made in that case may be usefully quoted:

"In my opinion the case was rightly brought in the Civil Court. The fact that a decree was obtained and was executed alters the nature of the present suit. No doubt if the plaintiffs had made this payment simply on demand and not in order to satisfy the decree, their suit for contribution would have lain in the Revenue Court, but the right of the superior proprietor to obtain rent from the under-proprietors or from their lambardars had merged in his decree. The only rights he possessed were to execute the decree. Every suit for contribution founded upon a decree is cognizable by the Civil Court."

We are not called upon to express any opinion about the distinction drawn in the remarks quoted above. It would be enough to say that in the present case the suit is not founded upon a claim for contribution based on a decree, and the case is therefore distinguishable.

For the above reasons we are of opinion that the suit is governed by section 108, clause (16) and is cognizable by the Revenue Court. We answer the reference accordingly.

(1) (1925) 12 O.L.J., 635.