

APPELLATE CIVIL

Before Mr. Justice Bisheshwar Nath Srivastava

RAM SWARUP (DEFENDANT-APPELLANT) v. UMA NATH
BAKSH SINGH, RANA (PLAINTIFF-RESPONDENT)*

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March, 12

*Oudh Rent Act (XXII of 1886), sections 103(16), 120 and 132—
Suit by taluqdar for revenue arrears—Proprietor of a chak
in a taluqa paying revenue through taluqdar—Taluqdar,
whether can recover revenue paid by him for proprietor—
Lambardari dues, suit for, by taluqdar—Revenue payable
through taluqdar—Taluqdar if entitled to lambardari dues—
Suit for lambardari dues, limitation for—Section 132, Oudh
Rent Act, whether applies.*

Where the proprietor of a *chak* forming part of a *taluqdari* mahal is appointed lambardar of the *chak* in subordination to the *taluqdar*, the *sadar* lambardar, and he has been paying the Government revenue to the *taluqdar* who deposits it in the Government Treasury, the proprietor is liable to the *taluqdar* for arrears of revenue paid by the *taluqdar* on his behalf. A *taluqdar* being the *sadar* lambardar or the lambardar of the *taluqdari* mahal in which the village or *chak* is included is entitled to lambardari dues as revenue is payable through him.

A claim for arrears of lambardari dues is governed by the general rule of limitation laid down in section 129, Oudh Rent Act, which prescribes one year from the date of the accrual of the cause of action. Section 132 does not cover such a claim.

Mr. *Salig Ram*, for the appellant.

Mr. *P. N. Chaudhari*, for the respondent.

SRIVASTAVA, J.:—This is a second appeal arising out of a suit for arrears of revenue and lambardari dues for the years 1337 to 1340 Fasli. The suit was decreed by both the lower Courts. When this appeal came before me for hearing on the 15th of August, 1935, it was contended that no claim was made in the plaint for lambardari dues and that the Courts below were therefore wrong in passing a decree for the said dues. On

*Second Rent Appeal No. 20 of 1934, against the decree of Mr. K. N. Wanchoo, District Judge of Rae Bareilly, dated the 6th of January, 1934, upholding the decree of K. B. Mirza Ali Sajjad Husain, Assistant Collector, First Class of Rae Bareilly, dated the 16th of September, 1933.

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examining the record I found that the word used in the plaint was *malikana* and that it was treated as synonymous with lambardari dues by the lower Courts. I felt that the defendant might have been prejudiced by this misdescription and therefore remanded the case to the trial Court with a direction that the plaintiff should be allowed to amend his plaint by substituting the claim for lambardari dues in place of *malikana* and that the defendant should be allowed opportunity to raise appropriate defences in respect of such a claim. This has been done and the findings returned by the trial Court are that the plaintiff is the "*sadar lambardar*" of chak Bahai and is entitled to receive lambardari dues from the defendant. The defendant has filed objections against the correctness of these findings.

The relative position of the parties so far as I can gather from the documents on the record is that the plaintiff is the *taluqdar* of Khajurgaon and that the defendant is the proprietor of chak Bahai which forms part of the *taluqdari mahal* of Khajurgaon estate. The defendant's ancestor obtained a decree (exhibit 2) at the first regular settlement for superior proprietary rights in chak Bahai but it was proved therein that when revenue is assessed it will be paid through the *taluqdar*. The same provision is also to be found in the *dasturs dihi* (exhibits 3 and 4) prepared at the second and third settlements. In both these documents it is stated that the Government revenue is paid by the proprietor of chak Bahai to the *taluqdar* who deposits it in the Government Treasury. Exhibit 24 which is a copy of an order of the Extra Assistant Commissioner, dated the 25th of March, 1870, also shows that Jai Gobind, the ancestor of the defendant, was appointed lambardar of chak Bahai in subordination to the *taluqdar* who was described as the *sadar lambardar*. Similarly the report, exhibit 26, dated the 14th of March, 1870, shows that the revenue of chak Bahai was payable through the *taluqdar*. Thus it is amply clear that under the agreement made between the ancestors of the parties and

under the terms of the decree and order passed at the settlement the revenue of chak Bahai was payable through the *taluqdar* and that this arrangement has continued during the second and third settlements. I must, therefore, reject the defendant's contention that the payment of Government revenue by the plaintiff was a payment merely as a volunteer. My conclusion therefore is that the Courts below were right in holding the defendant liable for the arrears of revenue paid by the plaintiff *taluqdar* on his behalf.

Next as regards the lambardari dues it is no doubt true that the plaintiff is not the lambardar of chak Bahai but I must take it that being the *taluqdar* he is the lambardar of the *taluqdari mahal* of the Khajurgaon estate. The finding of the trial Court about the plaintiff being the *sadar* lambardar of village chak Bahai appears to mean only that he is the lambardar of the *taluqdari mahal* in which chak Bahai is included and in this sense it must be accepted as correct. Exhibit 24 shows that when Jai Gobind was appointed lambardar he agreed not to claim any *haq-i-lambardari*, but there is nothing to show that the *taluqdar* is not entitled to the lambardari dues even though the revenue is payable through him. I must therefore accept the lower Court's finding about the plaintiff being entitled to claim lambardari dues from the defendant.

Lastly there is the question of limitation in respect of the claim for lambardari dues. The Courts below have given the plaintiff a decree for lambardari dues for 1337 to 1340 Fasli. The general rule of limitation laid down in section 129 of the Oudh Rent Act prescribes a period of one year from the date of the accrual of the cause of action. Section 132 does not in my opinion cover a claim for arrears of lambardari dues. This section relates only to suits for recovery of arrears of revenue or rent or share of profits. It seems hardly possible to include a claim for lambardari dues under any of these heads. The counsel for the parties have not been able to refer me to any decided case on the point, but it seems

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to me quite clear that in the absence of any specific provision relating to a claim for arrears of lambardari dues it must be governed by the general rule of limitation laid down in section 129 of the Oudh Rent Act. I am accordingly of opinion that the claim for arrears of lambardari dues for the years 1337, 1338 and 1339 Fasli was barred by limitation. The amount decreed by the lower Court should therefore be reduced by a sum of Rs.28-8.

The result is that the appeal is allowed in part, the decree of the lower Court is modified and the amount decreed is reduced by a sum of Rs.28-8. In the circumstances I make no order as to the costs of the appeal.

Appeal partly allowed.

APPELLATE CIVIL

*Before Mr. Justice Bisheshwar Nath Srivastava
 and Mr. Justice E. M. Nanavutty*

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SITLA BAKHSH SINGH (DEFENDANT-APPELLANT) v.
 MAHABIR PRASAD (PLAINTIFF-RESPONDENT)*

Transfer of Property Act (IV of 1882), sections 130 and 136—Contract Act (IX of 1872), section 23—Bond executed in favour of two persons—Assignment by them in favour of a Special Magistrate and Assistant Collector, whether void—Death of one of the assignors—Suit by the other on the basis of the bond, whether lies—Civil Procedure Code (Act V of 1908), Order I, rule 10—Assignment of a bond in favour of a person, whether void—Suit by assignee, whether a suit by a wrong person—Substitution under Order I, rule 10, if proper—Second appeal—Costs—Lower appellate Court disallowing certain costs—High Court, whether should interfere with the exercise of discretion in allowing costs.

Where a bond executed in favour of two persons is assigned by them in favour of a Special Magistrate and Honorary Assistant Collector, *held*, that the assignment is altogether void in law and no rights pass from the transferor to the transferee

*Second Civil Appeal No. 120 of 1934, against the decree of Mr. K. N. Wanchoo, i.c.s., District Judge of Rae Bareilly, dated the 10th of January, 1934, modifying the decree of Babu Bhagwati Prasad, Subordinate Judge of Partabgarh, dated the 20th of February, 1933.