

The result therefore is that the amount due to the plaintiff for the four years in suit at the rate of Rs.72-3 per annum is Rs.288-12. Interest thereon at the statutory rate amounts to Rs.24-1-2 making a total of Rs.312-13-2. It is admitted by the counsel for the plaintiff that he has received Rs.153-2-9 in part payment of the arrears in suit. In addition to this the lower appellate court has given the defendant credit for Rs.10 which was paid in December, 1933. Thus deducting Rs.153-2-9 plus Rs.10 from Rs.312-13-2 the balance due to the plaintiff amounts to Rs.149-10-5. As the plaintiff has appealed to this court for Rs.110 only and his claim has already been decreed for Rs.16-15-6, I therefore allow the appeal and modify the decree of the lower court decreeing the plaintiff's claim for Rs.126-15-6. The plaintiff-appellant will get his proportionate costs from the defendant in the lower courts. As the respondent has not appeared to oppose the appeal I make no order as to the costs of this Court.

*Appeal allowed.*

## APPELLATE CIVIL

*Before Mr. Justice Bisheshwar Nath Srivastava, Chief Judge,  
and Mr. Justice H. G. Smith*

SURAJ BAKHSH SINGH (DEFENDANT-APPELLANT) *v.* BALDEO SINGH AND ANOTHER (PLAINTIFFS-RESPONDENTS)\*

1937  
January, 26

*Oudh Laws Act (XVIII of 1876), section 9(2)—Pre-emption—Village divided into number of thoks having revenue assessed and having lambardar—Thoks sub-divided into pattis—Pattis, if separate mahals—Sale of land in one patti—Co-sharers in different pattis of same thoks, rights of—Co-sharer related to vendor, if has preferential right of pre-emption.*

Where a village is divided into a number of *thoks* each of which has a lambardar and each of the *thoks* is further sub-

\*Section 12(2) Oudh Courts Act Appeal No. 5 of 1935, against the decree of Hon'ble Mr. Justice M. Ziaul Hasan, Judge of the Chief Court of Oudh at Lucknow, dated the 8th of March, 1935, confirming the decree of Dr. Ch. Mohammad Abdul Majid Abdul Azim Siddiqi, Additional Civil Judge of Lucknow, dated the 31st of July, 1933, reversing the decree of Syed Akhtar Ahsan, Munsif Haveli, Lucknow, dated the 23rd of December, 1932.

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divided into several pattis and the revenue assessed on each *thok* is distributed amongst the various pattis constituting the *thok*, the fact of separate revenue being mentioned against each patti cannot entitle each patti to be treated as a mahal, but the fact that there is a separate lambardar for each *thok* is a strong circumstance in favour of the *thoks* being treated as mahals. Where, therefore, in the case of sale of the land in one of the pattis in such a *thok* the vendee and the pre-emptor are co-sharers in different pattis in the same *thok* the case is governed by section 9, clause (2) of the Oudh Laws Act and if the pre-emptor is related to the vendor, while the vendee is not so related, the pre-emptor is entitled to preference against the vendee on the ground of relationship under that section.

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

Mr. K. N. Tandon, for the respondents.

SRIVASTAVA, C. J. and SMITH, J.—This is an appeal under section 12(2) of the Oudh Courts Act against the judgment of our learned brother Ziaul Hasan, J. It arises out of a suit for pre-emption.

The admitted facts of the case are that the property sold is situate in patti Sobha Singh. The vendee defendant, who is the appellant before us, is a co-sharer in patti Kalka Singh, and the plaintiffs pre-emptors, who are the respondents before us, are co-sharers in patti Thakur Singh. All the courts below have also found that there are four lambardars in the village, and that the village is divided into four *thoks*, though as a matter of fact we find that there are only three *thoks*, two of which have one lambardar each, and the third has two lambardars. Our learned brother Justice Zia-ul-Hasan was of opinion that the aforesaid *thoks* must be taken to be mahals, and as all the three pattis mentioned above, patti Thakur Singh, patti Kalka Singh and patti Sobha Singh, formed part of one *thok* named Daulat Singh, therefore the case was governed by section 9, clause (2) of the Oudh Laws Act. As it had been found by the learned Additional Subordinate Judge that the plaintiffs were related to the vendor, while the vendee was not so related, and that finding was not disputed in second appeal, Justice Zia-ul-Hasan, in agreement with the lower appellate

court, held that the plaintiffs were entitled to preference against the vendee on the ground of relationship, under section 9, clause (2) of the Oudh Laws Act

It has been strongly contended on behalf of the appellants that each of the pattis in the village should be regarded as mahal. Stress has been laid on the fact that each of the pattis has revenue assessed on it, and that the co-sharers in the pattis appear to have been paying the Government revenue for their shares separately. As the facts with regard to the constitution of the village were not quite clear from the record before us, we permitted the parties to produce additional documentary evidence which might throw light on the point. We find from the documents, which have been produced by both the parties that an imperfect partition of the village was made in 1886. The partition proceeding shows that the village was divided into three *thoks*, each of which had a lambardar. Each of the *thoks* was further sub-divided into several pattis. The khewat of 1881 further shows that there was revenue assessed on each *thok*, and that the said revenue was distributed amongst the various pattis constituting the *thok*. Admittedly there has been no partition or any other change in the constitution of the village since the partition which took place in 1886. but somehow we find that the copy of the present khewat does not mention the *thoks*. However, on these facts we feel satisfied that the pattis in question cannot be regarded as mahals. It seems clear that each patti is merely a sub-division of the *thok*. As regards the fact of revenue being distributed over each patti, this is strictly in accordance with the provisions of section 84, clause (c) of the United Provinces Land Revenue Act. Thus the fact of separate revenue being mentioned against each patti cannot entitle each patti to be treated as a mahal. We are also impressed by the fact that there are lambardars with regard to each *thok*. Section 45 of the Land Revenue Act provides for the appointment of a lambardar for each mahal, and also authorises the Collector in certain cases to appoint an additional lambardar for any particular mahal. Although even after the admission

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of the additional evidence produced by the parties the position as regards the constitution of the village is not fully clear, yet it seems to us that the fact that there is a separate lambardar for each *thok* is a strong circumstance in favour of the *thoks* being treated as mahals. In any case we are quite clear that the appellant has failed to make out any case for each patti being treated as a mahal.

The appeal must therefore fail, and is dismissed with costs.

*Appeal dismissed.*

## APPELLATE CIVIL

*Before Mr. Justice E. M. Nanavutty*

RAM CHARAN (PLAINTIFF-APPELLANT) v. KEDAR NATH  
AND OTHERS (DEFENDANTS-RESPONDENTS)\*

1937  
February, 2

*Civil Procedure Code (Act V of 1908), sections 102 and 115—  
Suit of nature cognizable by Court of Small Causes—Provincial Small Causes Courts Act (IX of 1887), section 23—  
Small Cause Court erroneously returning plaint under section 23, Small Causes Courts Act—Suit tried on regular side—  
Appeal—Second appeal, if lies—Revision, if competent.*

Section 102 of the Code of Civil Procedure clearly lays down that if a suit is of the nature cognizable by Courts of Small Causes and the value of the suit does not exceed Rs.500 no second appeal will lie, although the suit has not been tried in a Small Causes Court and although the Small Causes Court returns the plaint under section 23 of the Provincial Small Causes Courts Act to be presented to another court on the ground that it involves a question of title and is not, therefore, cognizable by that court. Nor can an appeal in such a case be treated as an application for revision under section 115 of the Code of Civil Procedure on the ground that as the trial court had no jurisdiction to try the suit on the regular side,

\*Second Civil Appeal No. 236 of 1935, against the decree of Pandit Kishun Lal Kaul, Civil Judge of Sultanpur, dated the 18th of April, 1935, setting aside the decree of Babu Kamta Nath Gupta, Munsif, Sadar, Sultanpur, dated the 5th of January, 1935.