We do not think there has been a proper compliance with the terms of this section.

We, therefore, accept the appeal and set aside the conviction and sentence as well as the trial, and discharge the accused, and we leave it to the authorities to take such further action if any as they may deem necessary.

A. R.

Appeal accepted.

APPELLATE CIVIL.

Before Mr. Justice Martineau and Mr. Justice Moti Sagar.

KHURSHAID ALAM AND OTHERS (DEFENDANTS) Appellants

versus

PHANGU (PLAINTIFF) AND THE SECRETARY OF STATE (DEFENDANT) } Respondents.

1924

April 3.

Civil Appeal No. 1026 of 1920.

Custom—Succession—Whether the ala malik *succeeds to an* adna malkiat *where the line of the* adna malik *has become extinct, in absence of proof of a custom to that effect, in villages where the* ala malik *is merely* a taalukdar.

Held, that in villages where the *adna maliks* are the real proprietors, the *ala malik* being merely a *taalukdar* receiving a certain percentage on the revenue, the latter does not succeed to the *adna malkiat* when the line of the *adna malik* has become extinct, in the absence of a provision to that effect in the *Wajib-ul-arz* or any other evidence in proof of such a custom.

Sardar Sarup Singh v. *Sundar* (1), followed.

Surjan v. *Lalu* (2), distinguished.

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(1) 9 P. R. 1898. (2) 175 P. R. 1888.

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KHURSHAID ALAM v. PHANGU.

First appeal from the decree of Pandit *Kundan Lal*, Bashisht, *Subordinate Judge, 1st Class, Sialkot, dated the 16th February 1920, decreeing the plaintiff's claim.*

MUHAMMAD IQBAL, for Appellants.

TEK CHAND and RAM CHAND MANCHANDA, for Respondents.

The judgment of the Court was delivered by—

MARTINEAU J.—The question in this case is as to the right of an *ala malik* in a village to succeed to the *adna malkiat* when the line of the *adna malik* has become extinct. One Hoshiara was the *adna malik* of the land in suit. He was succeeded by his widow, and on her death, as he left no relations, it was held by the Collector that the rights in the *adna malkiat* escheated to the Crown and they were sold by auction. The plaintiff is the heir of one Chela, whose widows were entered in the revenue records in 1862 as the *ala maliks*. The widows having died, the plaintiff claims to be entitled to the land by virtue of his being the *ala malik*. He has been given a decree, from which there are two appeals, one (No. 1026 of 1920) by the auction purchasers, and the other (No. 1106 of 1920) by the Secretary of State.

The argument for the respondent is that he is the overlord, his rights in the land being limited only by those of the *adna malik*, and that consequently he becomes the full owner when the line of the *adna malik* has died out; but the facts as to the acquisition by the *adna* and *ala maliks* of their respective rights are opposed to this argument. Hoshiara was the owner of one-fourth of the village, which was founded by his ancestor Pargu as stated in the note to the pedigree-table of the Settlement record of 1865 (page 11 of the paper-book). There was no community of interest be-

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KHURSHAID ALAM v. PHANGU.

tween Hoshiara and Chela, who belonged to a different tribe and was not an owner in the village, and it appears that Chela's widows were recorded as *ala maliks* only as the result of a redemption suit brought against them by Hoshiara in 1862, in which the Courts held that they were entitled to 10 *per cent.* on the land revenue as *taalukdari* dues on account of Chela having given financial aid to Hoshiara's father when the latter was pressed by one Takht Mal for the payment of money that he owed.

In these circumstances the plaintiff is not, in our opinion, entitled to succeed to the land. *Surjan* v. *Lalu* (1), on which he relies, does not lay down any universal rule as to the rights of *ala maliks*. This was pointed out in *Sardar Sarup Singh* v. *Sundar* (2) and it was also observed that, while in some parts of the country the *ala maliks* are the real proprietors, the *adna malik* being little more than a tenant with a right of occupancy, in other parts the *adna maliks* are the real proprietors, the *ala malik* being merely a *taalukdar*, receiving a certain percentage on the revenue. In the present case just as in *Sardar Sarup Singh* v. *Sundar* (2), the *ala malik* is entitled only to a percentage on the revenue, and there is no provision in the *wajib-ul-arz* to the effect that if the *adna malik's* line dies out his land will revert to the *ala malik* nor is there any other evidence in proof of such a custom.

We accordingly accept both the appeals, reverse the decree passed by the lower Court, and dismiss the suit with costs throughout.

A. N. C.

Appeal accepted.

(1) 175 P. R. 1888. (2) 9 P. R. 1893.