

LETTERS PATENT APPEAL.

Before Bhide and Currie JJ

KANWAR BHAN (DEFENDANT) Appellant

versus

BHAGAT JIWAN DAS AND OTHERS } Respondents.
(DEFENDANTS)
GILLA RAM (PLAINTIFF)

1935
Oct. 30.

Letters Patent Appeal No. 87 of 1933.

Alluvion and Diluvion — Rights of Adna Maliks on re-emergence of land — Village Makhan Bela — Tahsil Alipur, District Multan — Wajib-ul-arz — interpretation of.

Held, that according to the Wajib-ul-arz of village Makhan Bela in Alipur Tahsil of the Multan District, when land is submerged, the rights of the adna malik are extinguished, but on its re-emergence he is entitled to regain possession of it by paying jhuri, and if the superior owner refuses to accept the jhuri offered by the adna malik, the matter is to be determined with regard to the quality of the land and capacity of the adna malik.

Khuda Bakhsh v. Vir Bhan (1), referred to.

Letters Patent Appeal from the decree passed by Dalip Singh J. in C. A. No.186 of 1933, on 23rd October, 1933, affirming that of Sardar Sewaram Singh, District Judge, Multan, dated 2nd November, 1932, granting the plaintiff a decree for Rs.28-6-0 against the ala maliks, defendants.

HAR GOPAL, for Appellant.

YASHPAL GANDHI, for MEHR CHAND MAHAJAN,
for (Plaintiff) Respondent.

CURRIE J.

CURRIE J.—The sole point arising in these two appeals is the interpretation to be placed on the clause in the *Wajib-ul-arz* of village Makhan Bela in the Alipur *Tahsil* relating to the rights of *adna maliks* in land which has been subject to diluvion. In these

cases it was held that the *adna malik* on the re-emergence of the land was entitled to regain possession of the land on payment of *haq jhuri*. The learned Judge who decided the appeal in Chambers adopted this view in consideration of the ruling given in *Khuda Bakhsh v. Vir Bhan* (1), but expressed certain doubts as regards the interpretation of the *Wajib-ul-arz*.

The relevant clause of the *Wajib-ul-arz* runs as follows:—

“ *Doom—Andar Hadud Mauza Burd Baramad ka Asar—Is Mauza men do kism ki milkiyat Adna-o-Ala hai. Jis Malik Adna ki zamin burd ho jati hai—to Baramdgi ke waqt woh zamin milkiyat Malkan-ala ki hoti hai—Malkan-Adna ka is zamin par kuchh tehqag nahin rehta. Malkan-i-Adna bad haq dene Jhuri* ” *Malkan-i-Ala ko mustahaq qabza karneke is zamin per hongee, bila dene haq “ Jhuri ” ke unka kuchh wasta nah hoga. Agar Malkan-i-Ala Jhuri amdan nah leven to Malkan-i-Adna is raqba baramdah par qabza karneke majaz nahin hai, aur jhuri ku tasfia Malkan-i-Ala-o-Adna hasab haisiat arazi-o-malik Adna ho jata hai. Sharah koi khas muqarrar nahin hai.* ”

I would interpret this as meaning that when the land is submerged the rights of the *adna malik* are extinguished, but on its re-emergence he is entitled to regain possession of it by paying *jhuri*. The rate of the *jhuri* is not fixed and if the superior owner refuses to accept the *jhuri* offered by the *adna malik* the matter is to be determined with due regard to the quality of the land and the capacity of the *adna malik*. That, I think, is the only interpretation that can be put on this clause.

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Mr. Har Gopal argues that the *ala malik* has an absolute right to refuse to accept *jhuri*. If that was so, it would, in my opinion, have been unnecessary to insert in the *Wajib-ul-arz* the condition that the *adna malik* had the right to regain possession on payment of *jhuri* and further the words relating to the method of assessment of the *jhuri* in case of dispute would have been entirely unnecessary. These words form part of the same sentence as the words relating to the refusal of the *ala malik* to accept *jhuri* and must be read with the first part of the sentence. They cannot be separated into two separate and distinct clauses.

In my opinion, therefore, the interpretation placed on this clause by the learned Single Judge was correct and I would dismiss the appeal with costs.

BHIDE J.

BHIDE J.—I agree.

P. S.

*Appeal dismissed.***REVISIONAL CRIMINAL.***Before Coldstream J.*

BAIJ NATH BHATNAGAR (ACCUSED)

Petitioner

versus

MOHAMMAD DIN (COMPLAINANT) Respondent.

Criminal Revision No. 525 of 1935.

Criminal Procedure Code, Act V of 1898, sections 162, 172 : Statements of witnesses recorded in Police diary in a previous case — whether the record can be referred to in order to contradict the witnesses in a subsequent case — without permission of the head of the Police Department — Indian Evidence Act, I of 1872, sections 123 and 76 — and whether a copy of the recorded statement can be demanded.

Held, that section 162, Criminal Procedure Code, does not forbid an accused person to contradict a witness by a previous statement made to the Police in an investigation not

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