

(1937) 03 AHC CK 0010**Allahabad High Court****Case No:** None

Pt. Brij Chandra Sharma

APPELLANT

Vs

Ram Narain and Others

RESPONDENT

Date of Decision: March 18, 1937**Final Decision:** Dismissed**Judgement**

1. This is a second appeal by the plaintiff against a decree of the lower appellate Court holding that defendant 6 is not liable for the claim of the plaintiff brought u/s 221 of the Agra Tenancy Act (Act 3 of 1926). The plaint Beta out that the plaintiff is a lambardar of mauza Jahangirpur and that he paid the land revenue for the Pasli year 1338 and the Fasli year 1339 to the Government Treasury and that during those years defendants 1 to 3 were owners in possession of half the property and defendant 4, mortgagee, was in possession of the other half. The property had originally belonged to one Mt. Champa Devi who it is found died in December 1926. Defendants 1 to 3 obtained mutation and possession as her heirs. Defendant 6, Ram Narain, contested their claim and filed a civil suit and eventually succeeded in obtaining a decree of the High Court for possession as the heir of Mt. Champa Devi and on that decree he was put into possession and his name was entered in the khewat on 22nd July 1932. This was just after the period for which land revenue is claimed, the years 1930-31 and 1931-32 as the period ended in June 1932. The plaint set out that the claim was brought against defendants 1 to 4 and in para. 5 it was stated that if for any reason in the opinion of the Court defendants 1 to 4 or any of them is not found to be responsible to the plaintiff, a decree may be passed against defendants 5 and 6. Defendant 5 is Mt. Manohari, and her case does not concern us as the trial Court dismissed the suit against her. Para. 6 of the plaint asked that a decree might be passed against all the defendants or against those defendants who were held responsible. The trial Court passed a decree against all the defendants except Mt. Manohari, the responsibility being joint and several. The only appeal brought was by defendant 6, Ram Narain, and the Court below has held that as Ram Narain was not in possession during the period for which the plaintiff paid land

revenue, there was no liability against Ram Narain. The sole question argued in this appeal is that although Ram Narain was not in possession during the years in suit still because he has been found eventually to be the legal heir of Mt. Champa Devi, therefore the plaintiff "has a claim not only against the persons who were in possession against whom he has obtained a decree but also against defendant 6 as the legal heir although he is not in possession. Learned Counsel endeavored to substantiate this argument by reference to various sections. Section 2(21) Agra Tenancy Act states as follows:

A lambardar may sue a co-sharer for arrears of revenue payable to the Government through the lambardar by such co-sharer and for village expenses and other dues for which such co-sharer may be liable to the lambardar.

2. There is nothing in this section which indicates that the person who may be sued is a co-sharer out of possession. Section 229 states that the word "co-sharer" includes also "the heirs, legal representatives, executors, administrators, and assigns of such persons". Now although defendant 6 is no doubt the heir of Mt. Champa Devi, he is in no way connected with the persons who were in possession, defendants 1 to 3. So the liability which existed on defendants 1 to 3 cannot in any way be transferred to defendant 6 by virtue of the provisions in Section 229, Tenancy Act. Learned Counsel further referred to Section 142, Land Revenue Act, Act 3 of 1901. That section provided as follows:

All the proprietors of a mahal are jointly and severally responsible to Government for the revenue for the time being assessed thereon, and all persons succeeding to the proprietary possession therein, otherwise than by purchase u/s 160, shall be responsible for all arrears of revenue due at the time of their succession.

3. This section therefore indicates that the persons who are responsible to Government are those in proprietary possession and those succeeding to proprietary possession. At the same time the Explanation states that a proprietor means a person in proprietary possession. There is no doubt that as regards this section there is a responsibility on a person succeeding for all arrears of revenue due at the time of their succession. But the section deals with responsibility to Government and no doubt there is a charge in favour of Government on the property of a co-sharer and that charge remains on the property and can be enforced against the property in the hands of any one in whom the share may come. But the position of a lambardar is different. There is no charge created by Section 221, Tenancy Act, in favour of the lambardar and his right is merely a personal right against a co-sharer. We are of opinion that for the purpose of Section 221 a co-sharer must be taken as the person who is recorded as a co-sharer for the period in suit.

4. u/s 40, Land Revenue Act, all disputes regarding entries in the annual registers are decided on the basis of possession and when the revenue Court finds that a

certain person is in possession as a co-sharer, all the liabilities of the co-sharer attach to that person. It is that person alone who can be the subject of a suit u/s 221, Tenancy Act. If we were to hold otherwise and hold that a proprietor out of possession could be a co-sharer within the meaning of Ch. 14, Tenancy Act, then such a person would have a right to bring a suit for profits against the lambardar and considerable confusion would arise if the revenue Courts were required to adjudicate on the rights of rival claimants to be co-sharers on the basis of their title, a matter which is solely for the civil Courts to determine. Although no ruling has been shown directly dealing with the case of a lambardar and a co-sharer, we have been shown a ruling by Tudball, J. in Ballabh Das v. Sita Ram (1912) 14 I.C. 578. In this ruling it was held that a co-sharer who pays arrears of revenue on behalf of another co-sharer cannot recover the same u/s 160, Agra Tenancy Act (Act 2 of 1901) if the defaulting co-sharer was not in possession at the time of default. There is also a ruling of a Bench of this Court in [\(Kunwar\) Muhammad Abdul Jalil Khan Vs. \(K.B. Nawab Muhammad\) Ubaid Ullah Khan](#) where it was laid down that no suit for profits against a lambardar lies at the instance of an owner who has been dispossessed by other people whose names are recorded in the revenue papers, and that such a person himself should obtain possession through the civil Court against the trespassers before he can be entitled to maintain the suit. For these reasons we consider that the decree of the lower Court was correct and we dismiss this second appeal with costs.