

(1914) 05 AHC CK 0043

Allahabad High Court

Case No: None

Gulzari Mal and Another

APPELLANT

Vs

Jai Ram

RESPONDENT

Date of Decision: May 2, 1914

Citation: (1914) ILR (All) 441

Hon'ble Judges: Henry Richards, C.J; Tudball, J; Pramada Charan Banerji, J

Bench: Full Bench

Final Decision: Allowed

Judgement

Henry Richards, C.J. Pramada Charan Banerji and Tudball, JJ.

This appeal arises out of a suit brought by the lambardar against a tenant (purporting to be under the provisions of Section 63 of the Tenancy Act) for ejectment. The court of first instance gave a decree. The lower appellate court held that the lambardar could not bring the suit without joining the other co-sharers and accordingly reversed the decree of the court of first instance. On second appeal to this Court a learned Judge took the same view as the lower appellate court and dismissed the appeal.

2. As the question is one of very considerable importance it has been fully argued before this Bench. The contention put forward on behalf of the respondent is as follows: That there are in this mahal a number of co-sharers, and that accordingly under the provisions of Section 194 of the Tenancy Act, the suit cannot be maintained unless all the co-sharers join in the suit, and that the dambardar cannot be regarded as the agent appointed by them to act on their behalf. If this contention be sound, it would revolutionize the practice prevailing in lambardari villages in these provinces for generations. Indeed, the learned advocate for the respondent felt himself bound to admit that the argument must necessarily go so far as to contend that the lambardar could not even give a valid discharge for the rent payable by a tenant so as bind the other co-sharers.

3. "Lambardar" in the Tenancy Act is declared to have the same meaning as in the Land Revenue Act. In the Land Revenue Act the expression is defined to mean "a co-sharer of a mahal appointed under this Act to represent all or any of the co-sharers in that mahal." In "lambardari" villages in these provinces the duties of the lambardar are fairly well understood and recognized. Beyond all doubt he has the power of collecting rents. The following extract from a judgment of the Board of Revenue in our judgment fairly describes the position of the lambardar in a "lambardari" village: "Speaking generally, the lambardar is the manager of the common lands entitled to collect the rents, settle tenants, eject tenants, procure enhancement of rents, and do all necessary acts relating to the management of the estates for the common benefit."

4. It would be almost absurd to hold that the lambardar has power to collect the rents, and at the same time to hold that he had no power to enforce the collection. That he has power to collect rents is clearly shown by the provisions of Section 164 which is as follows: "A co-sharer may sue the lambardar for his share of the profits of the mahal or any part thereof. In such suit a court may award to the plaintiff not only the share of the profits actually collected but also of such sum as the plaintiff may prove to have remained uncollected owing to the negligence or misconduct of the defendant."

5. It will be seen from the provisions of this section that the lambardar is responsible to a co-sharer in a suit brought under the section for all rents which remained uncollected owing to his negligence. If the lambardar is entitled to collect the rents from the tenant, then he is a "landholder" within the meaning of that expression in the Tenancy Act, and he accordingly would be entitled to bring a suit like the present.

6. We think that it is extremely improbable that Section 194 was intended to apply to the case of a lambardari village. If, however, it does apply, in our opinion where the suit is brought by the lambardar in a lambardari village, strictly as lambardar, then the co-sharers must be deemed to have acted jointly through the person who is declared by law to be their representative.

7. Reliance has been placed upon the case of *Bishambhar Nath v. Bhullo I. L. R.* (1911) All. 98. That was a suit by the lambardar against a co-sharer for an excess of profits in which the other co-sharers were not joined for the profits payable to himself and other co-sharers. The case is not, therefore, similar to the present case, nor does it very clearly appear that the suit was a suit by the lambardar as such. We need express no opinion upon this case save to this extent that, if it was intended by the learned Judges to lay down as a matter of law that no suit can be brought by the lambardar in a lambardari village without joining all the other co-sharers, we cannot agree with the decision.

8. The result is that we allow the appeal, set aside the decree of this Court and of the lower appellate court, and remand the case to the lower appellate court with directions to re-admit the appeal upon its original number in the file and to proceed to hear and determine the same according to law.