

Lala Asa Ram and ors. Vs. Lala Ram Chander

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Court : Allahabad

Decided On : Mar-03-1943

Reported in : AIR1943All285

Appellant : Lala Asa Ram and ors.

Respondent : Lala Ram Chander

Judgement :

Dar, J.

1. This is an appeal by the defendants in a suit under Section 221, Agra Tenancy Act (3 of 1926), brought by a lambardar against two cosharers for recovery of revenue paid by the lambardar on behalf of the cosharers. The plaintiff, Ram Chander, and the defendants Asa Ram and Shib Saran Das are cosharers in khewats Nos. 1 and 2 of mohal Barumal in village Kota in Saharan-pur district and the plaintiff, Ram Chander, is the lambardar of the mohal. On 15th July 1938 the plaintiff, Ram Chander, raised an action in the Court of the Assistant Collector, First Class, Saharanpur, under Section 221, Agra Tenancy Act, alleging that for the years 1342 to 1344 F., the plaintiff paid the revenue which the defendants were liable to pay for their share of the said two khewats and consequently he claimed a decree for a sum of Rs. 2527-12-6 against the defendants.

2. The trial Court decreed the claim with regard to khewat No. 1 but dismissed the claim with regard to khewat No. 2 holding that the plaintiff as lambardar was also a

collecting cosharer in khewat No. 2 and he had not shown that the collections which he had made were insufficient for the payment of Government revenue. In the end, the trial Court passed a decree for Rs. 72-9-0 in relation to khewat No. 1 in favour of the plaintiff. Against this decree, the plaintiff made an appeal and the District Judge of Saharanpur granted to the plaintiff a decree for the entire sum claimed. The learned District Judge came to the conclusion that the plaintiff as lambardar of the mohal had an absolute right to recover from the defendants the share of the Government revenue which the plaintiff paid on behalf of the defendants and the question whether the plaintiff made any collections with regard to this khewat and whether those collections exceeded or did not exceed the amount of revenue which the plaintiff paid was a matter which could not be considered in this suit.

3. Against this decision, the defendants have made this second appeal and the main question which arises for our consideration in the case is whether the plaintiff lambardar has an absolute right to demand revenue from the defendants irrespective of the question whether he had collected the rent and profits of the defendants' share or not and irrespective of the question whether the collections made by him exceeded or fell short of the demand of the Government revenue. So far back as the year 1889 it was held in this Court in *Dharam Pal v. Madan Mohan* (92) 1892 A. W. N. 72 that

in a suit by a lambardar against a cosharer to recover the cosharer's portion of Government revenue paid by the lambardar it lies upon the plaintiff to show that he had in his capacity of lambardar exercised due diligence in the collection of rents.

4. And this view of law which was expressed on the Tenancy Act which was in force at that time has been followed with reference to subsequent Acts. In *Chandra Mohan Lal v. Mt. Mathuri Kuer* (35) 22 A. I. R. 1935 ALL. 912, it was held by Allsop J. that where the lambardar collected rents on behalf of the cosharers and paid revenue and he collected more profits than the revenue paid, he could not recover the Government revenue paid on behalf of the cosharers under Section 221, Agra Tenancy Act. The Board of Revenue has also consistently taken the view that a lambardar who has collected more profits than the revenue

paid is not entitled to maintain a suit for arrears of revenue under Section 221, Agra Tenancy Act: see Babu Singh v, Munshi Singh ('37) 1937 R. D. 370 and Babu Bam v. Chaturbhuj ('87) 1937 A. W. R. 1122. It will thus appear that in a case where the lambardar alone collects the profits of a mohal it is not open to him to bring a suit for recovery of revenue against other cosharers unless he can establish that his collections fell short of the revenue demand and the burden of proof is upon him in such a case to make out that the collections fell short for no default of his own.

5. It is contended on behalf of the respondent that under Section 221, Agra Tenancy Act, (3 of 1926) a statutory right is conferred upon the lambardar to recover from a cosharer arrears of revenue payable to the Government through the lambardar by such cosharer and if an action is raised under Section 221, Agra Tenancy Act, by the lambardar against the cosharer to recover the Government revenue paid by the lambardar for the cosharer, it is no defence to such an action that the lambardar had made collections of the cosharers' rents and profits and the revenue should have been paid out of those collections. It is further contended that a plea to the effect that the lambardar has paid the revenue out of the collections or should have paid the revenue out of the collections is a plea in the nature of a set-off and could not be entertained under the provisions of the Agra Tenancy Act (3 of 1926), and for this contention reliance is placed upon Sri Ram v. Jai Kishan Lal ('38) 25 A. I. R. 1938 All. 37.

6. In our opinion, in a suit under Section 221 where a lambardar makes collections in a mohal and he brings a suit for recovery of Government revenue from a cosharer, the plea of the defendant that revenue was paid or should have been paid out of the collections is not a plea in the nature of a set-off, but it is in fact and in law a plea of payment. What the defendant in such a case contends is that the lambardar paid the revenue out of the money of the defendant and therefore the payment of revenue made by the lambardar out of the defendant's money in the eye of the law was a payment by the defendant. If such a plea could be established on fact, then the lambardar's action would not be covered by Section 221 of the Act and it would not be proper to hold that any arrear of revenue arose or was payable to the Government through the lambardar or that the lambardar

discharged it. If A discharges the liability of B at a time when A had in his hands funds of B sufficient to discharge B's liability, the presumption is that the liability was discharged out of B's funds and at B's request and A cannot recover from B the sum given in discharge of the liability unless there are facts to negative this presumption. The liability to pay the revenue of the mohal is joint and several against the lambardar and the cosharers, and under the statute the payment of the revenue is made a first charge on the joint estate. Till the Government revenue is paid, the rents and profits of the mohal cannot be appropriated by the lambardar or paid to the cosharers and the rents and profits collected by the lambardar must first satisfy the Government revenue.

7. It follows therefore that if the lambardar has made collections of the rents and profits of the cosharers and has sufficient funds in his hands arising out of such collections to pay the Government revenue, it is the duty of the lambardar to do so and if while retaining the funds of the cosharers the lambardar pays the Government revenue, the presumption is that the payment was made out of the cosharers' money and he cannot be permitted to assert that the Government revenue of the cosharers had fallen into arrear and was payable, nor can he call upon the cosharers to pay the revenue by an action under Section 221 of the Act. When a person holds in his hands funds or money belonging to another person and also discharges liability of that other person to the extent of money or funds in his hands, in the eye of the law the payment and the liability go together and the liability must be taken to have been discharged by the fund or money of the person against whom the liability existed.

8. The case in *Sri Ram v. Jai Kishan Lal* ('38) 25 A. I. R. 1938 All. 37 which has been relied on by the respondent was a case under Section 222, Agra Tenancy Act, and not under Section 221 of the Act and in that case it was definitely found as a fact that the plaintiff who was suing for the share of the revenue paid on behalf of the cosharers had not made any collections. There are certain observations in that case about the nature of the plea of set-off, but those observations must be limited to the facts of that case and cannot be taken to lay down the general law on the rights and liabilities of the lambardar under Section 221 of the Act. But the difficulty in this case is that facts have not been clearly

ascertained by either of the Courts below. On behalf of the defendants it is alleged that the plaintiff collects the entire rent and profits of khewat No. 2 and the view of the trial Court was that the plaintiff was a collecting co-sharer though it is not quite clear to us what precisely is the meaning of this expression with reference to the facts of this case. On behalf of the plaintiff, it is alleged that the defendants themselves have been in possession of a large area in this khewat as their sir and khudkasht and the plaintiff as lambardar makes no collections of the defendants share of rent and the defendants themselves collected the rent from tenants in addition to holding land as sir and khudkasht. These are all disputed matters of fact, and it is not possible to determine the legal rights of the parties without having the facts cleared up and it is therefore necessary to remit certain issues for determination to the Court below on fresh evidence. The following issues therefore shall be determined by the Court below after giving the parties liberty to produce fresh evidence and the findings will be returned to this Court within three months from this date and on receipt of the findings usual ten days will be allowed for objections.

9. Issues : (1) What amount has the plaintiff collected or could have collected with due diligence with regard to the rent and profit of the defendants' share for the years in suit in khewat No. 2 of mohal of village Kota? (2) Is any sum due to the plaintiff for the Government revenue paid by him of the defendants' share after deducting the collections which he might have made or which he could have made with due diligence of the defendants' share of rent and profits with regard to khewat No. 2? If so, what is the amount?

10. In determining the question of the collection of the defendants' share of rent and profits which the plaintiff might have collected, the Court below shall take into consideration the land, if any, which may be in possession of the defendants as sir and khudkasht as also any collections which the defendants might have made directly from tenants during the years in suit.