

(1906) 07 AHC CK 0015
In the Allahabad High Court

Chattray

APPELLANT

Vs

Nawala and Another

RESPONDENT

Date of Decision : 11-07-1906

Acts Referred:

Citation : (1907) ILR (All) 20

Hon'ble Judges : John Stanley, C.J.; George Knox, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

John Stanley, C.J. and George Knox, J.—It has been distinctly ruled in this Court in two cases at least that a lambardar has no general power to grant a lease of co-parcenary land beyond such term as the circumstances of the particular year or season may require, in the absence of a custom to the contrary. In the case of Jagannath v. Hardyal Weekly Notes, 1897, p. 207 Edge, C.J., and Blair, J., in the course of their judgment observed: "So far as we are aware, a lambardar has no general power to grant any lease of co-parcenary land beyond such as the circumstances of the particular year or particular season may require. In order to have the co-parcenary land cultivated, to obtain the benefit therefrom of the co-parcenary body, it is reasonable that the lambardar should have power, unless it is expressly withheld from him, to make a temporary letting of the eo-parcenary land." In that case, no doubt, the lease was a lease in perpetuity, but the principle laid down applies to all leases made by lambardars. The same view was expressed by Burkitt, J., in the case of Bansidhar v. Dip Singh I.L.R (1897) 20 All 438. The powers of a lambardar were shadowed forth in the third paragraph of Clause 10 of Regulation No. VII of 1882. At the end of that paragraph, referring to the appointment of Sudder Malguzars, as lambardars were formerly termed, power is given to the Collector "either to make a joint settlement with the parties collectively (that is, with the co-parcenary body) or a majority of them, or with an agent appointed by them or a majority of them or to select one or more of them to undertake the management of the mehaul as Sudder Malguzars, due

advertence being had to the wishes of all the co-parceners, and to the past custom of the village or villages comprised in the mehaul." The lambardar, from this it would appear, is to manage the co-parcenary property, and, in doing so to pay due regard to the wishes of all the co-parceners, as well as to the past custom of the village. It is only reasonable that such a manager should have power to make temporary lettings, but the duties imposed upon him do not seem to admit of his executing in favour of a lessee without the consent of the co-parcenary body a lease for a long term of years. No custom has been established in the present case in regard to the letting of the joint property, nor is there anything to show that the exigencies of the season or time when the impeached lease was granted required that the grant should be made for so long a term as seven years. We, therefore, uphold the decision of the Court below and dismiss the appeal.with costs.