

(1910) 06 AHC CK 0033
In the Allahabad High Court

Jagannath Prasad and Others

APPELLANT

Vs

Rustam Ali and Others

RESPONDENT

Date of Decision : 11-06-1910

Acts Referred:

Citation : 7 Ind. Cas. 98

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

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. The sole question involved in this appeal is concerned with the right of lambardars in the course of management of parti lands in a village, which parti lands are timber-bearing lands, to grant a lease of that land to lessees for the purpose of cutting down timber and converting it into charcoal.
2. A lease was executed in this case by the lambardars on 27th of July 1908, for a term of three years, purporting to give the plaintiffs, the lessees, power to cut down wood and convert it into charcoal. The appellants "who are co-sharers in the village objected to and interfered with the cutting down of the timber and alleged that the lambardars had no power to grant a lease of the kind.
3. The Courts below relying upon the provisions of the Wajib-ul-arz of the village came to the conclusion that lambardars were authorised to grant the lease. It is said that the provisions of the Wajib-ul-arz do not give the lambardars such power and that under the ordinary powers of management they are not entitled to grant a lease of the kind. On the other hand it is argued that they have such power under the Wajib-ul-arz but that in any case they have such a power if the lease be not detrimental to the interest of the co-sharers.
4. We are not aware of any authority, and none has been cited, for the proposition that lambardars can ordinarily grant leases of timber bearing common land of the village to lessees for the purpose of having timber cut and converted into charcoal. In the absence of authority, we do not see our way to

travel outside the provisions of the Wajib-ul-arz. In Clause (4) of the Wajib-ul-arz the practice as to the management of parti land is set forth. The heading of the clause is as follows :--"Usage as to the management of parti lands capable of being cultivated and as to breaking up (for tillage) such parti land." The provision then follows:--"Each co-sharer manages the parti land within his own patti and the lambardars the shamlat, and according to mutual agreement rent is taken etc." The question is whether the words the lambardars manage the shamlat," in view of the context, justified the lambardars in this case in granting the lease in question. It appears to us that this question must be answered in the negative. The powers given to manage shamlat land is in connection, as it appears to us, with the breaking up for tillage of the land. It does not seem to contemplate the granting of lease to lessees authorising them to cut down at will the timber existing upon the shamlat lands and convert it into charcoal. In view of the language of the Wajib-ul-arz, we think that the Courts below were wrong in decreeing the plaintiff's suit as against the appellants. They were not consenting parties to the lease and, as co-sharers in the shamlat land, were entitled to prevent the plaintiffs from cutting down their timber without their consent. If the lease had been a valid lease within the power of the lambardars, the case would have been different.

5. For these reasons we allow the appeal in so far that we set aside the decree of the lower appellate Court as against the defendants-appellants. In other respects, the decree of that Court will stand, the other co-sharers have not appealed and they may have been consenting¹ parties to the lease. The appellants will have their costs in all Courts against the plaintiffs.