
(1928) 12 AHC CK 0004
In the Allahabad High Court

Mohammad Noor Khan and Others	Vs	APPELLANT
Bande Ali Khan and Others		RESPONDENT

Date of Decision : 13-12-1928

Acts Referred:

Agra Tenancy Act, 1926 — Section 265

Citation : 114 Ind. Cas. 752

Hon'ble Judges : Mukerji, J

Bench : Single Bench

Judgement

Mukerji, J.—The respondents are unfortunately unrepresented in this Court. The learned Counsel who appears for the appellant, has however, put before me the only case which might be cited on behalf of the respondents, and I do not think that the respondents' absence really prejudices them.

2. The plaintiffs are co-sharers of 14 out of 72 sihams and the respondent Zahur Ahmad Khan is the lambardar and owner of the remaining sihams. Zahur Ahmad Khan granted a lease for seven years of a joint grove land in favour of respondent No. 1, BandeAli Khan. The plaintiffs thereupon at once came to the Court challenging the validity of the lease. The suit succeeded in the Court of first instance but failed in the lower Appellate Court. The learned Subordinate Judge who heard the first appeal found that the rent fixed was an adequate one and on that ground alone dismissed the suit.

3. In this Court it is contended that it was not the adequacy of the rent which alone was of importance and I agree with this contention. The lambardar takes, by the lease, the joint property, out of the possession of the plaintiffs for no less than seven years. Nobody can foretell what the yield of the grove would be in future years. It has been held in this Court that except for the exigency of a particular year or seasons it is not open to a lambardar to grant a lease for long years (e.g. seven years) without the consent of the co-sharers: see *Tikam Singh v. Khubi Ram* 30 A. 163 : AN.W.N. (1908) 56 : 5 A.L.J. 173. It will be noticed that under the new Tenancy Act, the powers of a lambardar have been defined

and among the powers conferred will not be found a power to grant a long lease: see Section 265 of Act III of 1926. The lease in the present case precedes the passing of the Act and the present law, therefore, does not apply but the law, enacted in Section 265 does recognise the law as has been laid down by this Court in a number of cases, ending with the case quoted above.

4. Holding as I do that it was incompetent on the part of the lambardar to grant the lease, I allow the appeal, set aside the decree of the Court below and restore the decree of the Court of first instance. The appellants will have their costs throughout.