

consideration of the sale-deed dated 2nd March 1909, which was deposited in the treasury on 25th February 1909, in connexion with the chief defendants' pre-emption suit against Narain Singh or any portion of it has been refunded to the plaintiffs the sum so refunded must be re-paid by the plaintiffs into Court for payment to the chief defendants (1 to 4) before the plaintiffs are given possession of their share under the decree. The chief defendants 1 to 4 will pay the plaintiffs-appellants' costs throughout.

R.M./R.K. *Appeal accepted.*

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SHAH DIN AND AGNEW, JJ.

Labhu and another — Plaintiffs—Appellants.

v.

Ganda Singh and others—Defendants—Respondents.

Second Appal No. 1165 of 1911, Decided on 16th July 1913, from decree of Divl. Judge, Hoshiarpur, D/- 9th February 1911.

Punjab Tenancy Act (16 of 1887), S. 111—Entry in Wajibularz of Nangal Kalan explained—Held qarabatis did not get any right of succession to occupancy right under S. 111.

The Wajibularz of Mauza Nangal Kalan, Tahsil and District Hoshiarpur, prepared in 1884 provided that "*Is bandobast men tanqih muzarian maurusi nahin hui. Jo muzarian hain nam unke khawat khatauni men likhae gae. Baad marne muzarian maurusi ke, uska beta ya bhai ya qarabati kashat karega :*"

Held: that the clause did not amount to an agreement at all, and could not therefore confer on the qarabatis of a deceased occupancy tenant any right of succession to the land in suit under S. 111, Tenancy Act. [P 165 C 1]

Sheo Narain and Muhamad Iqbal—for Appellants.

Ganpat Rai—for Respondents.

Judgment.—This suit relates to certain occupancy land situate in Mauza Nangal Kalan, Tahsil and District Hoshiarpur. The plaintiff, Ram Kishen, (who died during the pendency of the appeal in this Court and who is represented by Labhu and Harnama), claims to succeed to the land in dispute on the ground of being the nephew of the deceased occupancy-tenant, Sahib Singh. The defendants, who are the landlords, resisted the claim by pleading, inter alia, that the land had been occupied by the common ancestor of plaintiff and of Sahib Singh and that on no other ground could the plaintiff succeed to it. It has

been found as a fact in this case that the land in dispute was acquired by Sahib Singh, deceased, and it is therefore clear that the plaintiff has no right of succession under S. 59, Punjab Tenancy Act.

In the first Court the plaintiff urged that, apart from S. 59, Tenancy Act, he had a right of succession under the Wajibularz of the settlement of 1852 and that of the settlement of 1884, according to which it was contended the plaintiff, being a qarabati of the deceased occupancy tenant, was entitled to succeed to the land left by him. The lower Court have concurrently held that the agreement between landlords and tenants embodied in the Wajibularz of 1852 and on which the plaintiff relied was limited to the term of the said settlement and therefore could not help the plaintiff and further that the clause in the later Wajibularz of 1884, on which the plaintiff based his alleged title to the land, did not amount to an "agreement" such as would confer on the plaintiff a right of succession thereto apart from S. 59, Punjab Tenancy Act. The Divisional Judge has also held that, assuming that the clause in the Wajibularz of 1884 does amount to an agreement within the meaning of S. 111, Punjab Tenancy Act, a qarabati within the purview of that clause means an agnate who satisfies the conditions of S. 59 (1) (c), Tenancy Act *Allah Ditta v. Achhru Mal* (1). Upon these grounds the lower Courts have dismissed the plaintiff's suit.

The contentions advanced before us by the plaintiff's learned counsel are: (1) that the Wajibularz of 1852 was not limited to the terms of that settlement and that its provisions as to the succession to the occupancy land applied to the present case: (2) that, if the Wajibularz of 1852 does not apply to this case, that of 1884 does; and that under this latter Wajibularz the plaintiff who is a qarabati of the deceased occupancy tenant, has a right to succeed to the land in dispute. In connexion with the clause in the Wajibularz of 1884 the learned counsel further argued that the Divisional Judge was wrong in holding that a qarabati in order to succeed under that clause must show that he satisfies the conditions laid down in S. 59 (1) (c), Tenancy Act.

(1) [1910] 33 P. R. 1910=6 I. C. 774.

Upon the view that we take of the case, it is unnecessary to deal with the last mentioned part of the argument, as, in our opinion, the clause in the *Wajibularz* of 1884 which is relied upon by the plaintiff does not amount to an agreement at all, and cannot therefore confer on the plaintiff any right of succession to the land in suit under S. 111, Tenancy Act. The clause in question runs as follows: *Is bandobast men tanqih muzarian maurusi nahin hui. Jo muzarian hain nam unke khawat khatauni men lekhae gae. Baad marne muzaria maurusi ke uske bete ya bhai qarabati kasht karega*

It is clear from this clause that at the settlement of 1884 there was no investigation into the rights of the occupancy tenants: that the landlords did not enter into any agreement with the occupancy tenants in regard to the rights of succession of their collaterals, if any to the lands in their possession; and that the statement that an occupancy tenant will be succeeded on his death by his qarabati was a mere repetition of the rule of succession embodied in the *Wajibularz* of 1852. The relevant clause in the last mentioned *Wajibularz* is as follows: *Jo hamare gaon men muzarian maurust kasht karte hen. unhon ne baad samaat sharaif karit Maurusiyat maurusi rahne ka ta miaad bandobast sani iqar kia Baad mar jane kisi mauzaria ke bete uska wa dar surat na hone bete ke bhai ya qarabati uska kasht karega.* The wording of this clause clearly shows that an agreement was come to between the occupancy tenants and their landlords regarding the rule of succession to occupancy land, but the agreement was expressly limited to the term of settlement, and that agreement is, as held by the lower Courts, of no use to the plaintiff in the present case. The language of the *Wajibularz* of 1884 is very different from that of the earlier *wajib-ul-arz* showing as it does that no agreement whatever as regards the right of succession to occupancy land was concluded between the occupancy tenants and their landlords. There was no inquiry at all as to the mutual rights and obligations of the landlords and the tenants and the mere fact that the clause of the *Wajibularz* of 1852 as to a qarabati succeeding to the land of a deceased occupancy tenant was repeated in the *Wajibularz*

of 1884 is insufficient to show that a binding agreement within the meaning of S. 111, Tenancy Act, was made between the deceased occupancy tenant and the defendants in the present case as to confer on the plaintiff a right of succession to the land in dispute.

We maintain the decree of the lower appellate Court and dismiss this appeal with costs.

R.M./R.K.,

Appeal dismissed.

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BEADON, J.

Makhan Singh—Accused—Petitioner.

v.

Gunner Jepson—Complainant — Respondent.

Criminal Revn. Petn. No. 119 of 1913, Decided on 28th November 1913, for quashing proceedings of 1st Class Magistrate, Murree.

Criminal P. C. (5 of 1898), Ss. 190 (c) and 191—Offence reported against *A*—Cognizance taken against *B* also—Held it was under S. 190 (c) and accused entitled to transfer.

Where a Magistrate on receiving information from another Magistrate about the commission of an offence by *A* thought *B* to be the real culprit and consequently proceeded to try *B* in his own Court:

Held: that the Magistrate took cognizance of the case under S. 190 (c), Criminal P. C., 1898, and that the accused was entitled to have the case transferred to another Magistrate.

[P 166 C 1]

Hukam Chand—for Petitioner.

Facts.—A gunner reported to the Officer Commanding the Rawalpindi Cantonment that one *B* assaulted him and also used abusive language. That officer examined a few witnesses in support of the report and then addressed the following letter to the Assistant Commissioner in charge of Subdivision Murree:

No. 2497

From

The Cantonment Magistrate,
Murree Cantonment.

To

The Assistant Commissioner,
Murree, 2nd September 1913.

The attached reports are forwarded for such action as you consider desirable to take in this matter.

The name of the native, who, it is alleged made the assault of Gunner Jepson is reported to me as *Bishan Singh* employed as compounder in the shop of *Juggat Singh and Brothers*. There appears to be ample evidence as to the abusive language used and I would suggest that he may be proceeded against for using language likely to cause a breach of the peace.

(Sd). H. A. Kane, Major,
Cantonment Magistrate.