

A. I. R. 1917 Lahore 45 (2)

JOHNSTONE, C. J.

*Fazal Karim Khan*—Plaintiff—Petitioner.

v.

*Municipal Committee of Urmur*—Defendant—Respondent.

Civil Revn. Petn. No. 833 of 1916, decided on 12th February, 1917, from the Decree of Sr. Sub-Judge, Hoshiarpur, dated 10th July, 1916.

**(a) Punjab Municipal Act (3 of 1911), S. 56 (g) —S. 56 (g) does not apply to trees not provided by Municipality.**

S. 56 (g) of the Punjab Municipal Act does not apply to trees not provided by a Municipality itself. [P. 46, C. 2.]

**(b) Punjab Municipal Act (3 of 1911), S. 56 (g) —Municipality has power to remove and plant trees, but cannot make profit out of trees not belonging to it.**

A Municipality has power to remove and plant trees because it has full control over the sanitation and general management of the Municipal area, but it has no power to sell or make a profit out of trees which do not belong to it.

[P. 46, C. 2.]

*Muhammad Iqbal*—for Petitioner.

**Judgment.**—This is a suit of a very trifling value, but upon it depends the whole question of the ownership in trees in the *abadi* of the Municipality of Urmur Tanda. Plaintiff claims that the trees belong to him, admitting only that the trees

along a certain road outside the town belong to the defendant Municipality. Both the lower Courts have found in favour of the Municipality and plaintiff has come up here on the revision side.

The questions involved in the case are mixed questions of fact and law, and the only ground on which revision is possible is that the Court has overlooked certain valuable evidence produced by the plaintiff and has thus made mistakes.

Plaintiff is undoubtedly the sole owner of the soil, but of course when a Municipality is constituted, that Municipality acquires certain powers and titles. The ultimate ownership of course remains in the original proprietor except as regards land which the Municipality buys outright or acquires by compulsory process, and there does not seem to be any direct provision of law as to ownership of trees within Municipal limits.

Stress is laid by the plaintiff on the following pieces of evidence. *First*, a resolution of 20th July, 1907 by the Committee in which it appears to have been distinctly laid down that *the only trees* within the Municipal limits belonging to the Committee are those along a certain road outside the *abadi*. *Secondly*, the record of auctions of trees, which shows that Municipality has never auctioned any timber grown except on the road aforesaid. *Thirdly*, a list of Committee property prepared in 1911, regarding which the Deputy Commissioner, on the plaintiff's father's protest, directed that that property alone should be included which had been acquired by purchase. *Fourthly*, the fact that the Committee has never planted trees in the *abadi*, but only on that outside road.

First, second and fourth of these have been overlooked apparently by the lower Courts, and by the help of them there is no difficulty in arriving at the conclusion, that while the Committee, of course, has the power to remove trees or to plant trees wherever it likes, it has not the power of selling and making a profit out of trees which do not belong to it. It has power to remove trees because it has full control over the sanitation and general management of the Municipal area but on no other ground.

The lower Appellate Court seems to attach much importance to S. 56 of the Act. No doubt the said section lays down that all property of the nature "hereinafter specified in this section," *i. e.*, all public streets and all trees provided for them and situated

within the Municipality, shall vest in and be under the control of the Committee; but in my opinion this cannot possibly apply to trees not provided by the Municipality itself.

For these reasons, holding that the decisions of the lower Courts are incorrect and that a revision lies, I allow the revision and give plaintiff a decree which he claims with costs throughout.

R. M./R. K.

*Revision allowed.*

### A. I. R. 1917 Lahore 46

SCOTT-SMITH AND SHADI LAL, JJ.

*Rup Chand* and others—Plaintiffs—Appellants.

v.

*Fazal Ilahi* and others—Defendants—Respondents.

Second Appeal No. 420 of 1914, decided on 9th January, 1917, from the Decree of Divl. Judge, Shahpur, dated 19th January, 1914.

**Lease—Construction—One lease to two persons in equal shares—Each one can sue for his share.**

Where a lease is executed in favour of two persons in equal shares, the contract is a divisible one and each of the lessees is competent to bring a suit for the one-half share contracted to be leased to him. 32 All. 25, dist.

[P. 47, C. 1.]

*Nanak Chand*—for Appellants.

*L. M. Datta*—for Respondents.

**Judgment.**—The facts of the case, out of which this second appeal arises, are that defendants Nos. 1 and 2 contracted to lease certain land to Dittu Ram major and Sohan Lal minor. Dittu Ram died and plaintiffs-appellants are his reversioners and legal representatives. Sohan Lal, after attaining his majority, executed a release in favour of the lessors as regards his share and plaintiffs brought the present suit for possession under the lease of one-half the property as representing their share. The first Court granted the decree asked for, but on appeal the learned Divisional Judge held that as a contract with a minor is void and as the present contract is a joint and indivisible one, therefore it was void as a whole and the plaintiffs could not sue under it. The Judge cited *Shiam Lal v. Ram Piari* (1) as in some respects similar to the present case. It is very

(1) (1910) 32 All. 25=4 I. C. 706.