

IN THE HIGH COURT OF LAHORE

Decided On: 03.04.1924

Appellants: **Khurshaid Alam and Ors.**

Vs.

Respondent: **Phangu and Ors.**

JUDGMENT

Martineau, J.

1. The question in this case is as to the right of an ala malik in a village to succeed to the adna malkiat when the line of the adna malik has become extinct. One Hoshiara was the adna malik of the land in suit. He was succeeded by his widow, and on her death, as he left no relations, it was held by the Collector that the rights in the adna malkiat escheated to the Crown and they were sold by auction.

2. The plaintiff is the heir of one Chula, whose widows were entered in the revenue records in 1862 as the ala Maalox. The widow having died, the plaintiff claims to be entitled to the land by virtue of his being the ala malik. He has been given a decree, from which there are two appeals one (No. 1026 of 1920) by the auction-purchasers, and the other (No. 1106 of 1920) by the Secretary of State.

3. The argument for the respondent is that he is the overlord, his rights in the land being limited only by those of the adna malik, and that consequently he becomes the full owner when the line of the adna malik had died out; but the facts as to the acquisition by the adna and ala maliks of their respective rights are opposed to this argument. Hoshiara was the owner of one-fourth of the village, which was founded by his ancestor Pargu as stated in the note to the pedigree-table of the Settlement record of 1865 (page 11 of the paper-book).

4. There was no community of interest between Hoshia and Chela, who belonged to a different tribe and was not an owner in the village, and it appears that Chela's widows were recorded as ala maliks only

as the result of a redemption suit brought against them by Hoshiara in 1862, in which the Courts held that they were entitled to 10 per cent. on the land revenue as talukdari dues on account of Chela having given financial aid to Hoshiara's father when the latter was pressed by one Takht Mal for the payment of money that he owed.

5. In these circumstances the plaintiff is not, in our opinion, entitled to succeed to the land. Surjan v. Lalu (1888) 175 P.R. 1888, on which he relies, does not lay down any universal rule as to the rights of ala maliks.

6. This was pointed out in Sardar Sarup Singh v. Sundar (1898) 9 P.R. 1898 and it was also observed that, while in some parts of the country the ala maliks are real proprietors, the adna malik being little more than a tenant with a right of occupancy, in other parts the adna maliks are the real proprietors, the ala malik being merely a talukdar, receiving a certain percentage on the revenue.

7. In the present case just as in Sardar Sarup Singh v. Sundar (1898) 9 P.R. 1898, the ala malik is entitled only to a percentage on the revenue, and there is no provision in the wajib-ul-arz to the effect that if the adna malik's line dies out his land will revert to the ala malik, nor is there any other evidence in the proof of such a custom.

8. We accordingly accept both the appeals, reverse the decree passed by the lower Court, and dismiss the suit with costs throughout.

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