

## APPELLATE CIVIL.

*Before Guha and Bartley J.J.*

MAKHANLAL LAHA

v.

NAGENDRANATH ADHIKARI.\*

1932

July 15, 19.

*Partition—Surrender by tenant, if a transfer—Partition Act (IV of 1893),  
s. 4—Transfer of Property Act (IV of 1882).*

The surrender by a tenant of an interest in the tenancy, which is non-transferable, does not amount to a “transfer”, within the meaning of section 4 of the Partition Act.

The word “transfer” in the Partition Act has been used in the same sense and in the same way as it has been used in the Transfer of Property Act, under which enactment transfer includes sale, mortgage, lease, exchange and gift, but not surrender.

*Burton v. Reeve* (1), *Laird v. Briggs* (2) and *Attorney-General v. Mitchell* (3) referred to.

*Jumra Prasad Singh v. Basdeo Singh* (4) dissented from.

*Abdul Karim Mean v. Miajan Mianji* (5) distinguished.

APPEAL against order of remand, by the plaintiffs in a suit for partition.

The relevant facts and arguments are set out in the judgment.

*Rupendrakumar Mitra* for the appellants.

*Amritalal Mukherji* for the respondent.

*Cur. adv. vult.*

GUHA J. This appeal is directed against the decision of the learned Additional Subordinate Judge,

\*Appeal from Appellate Order, No. 495 of 1931, against the order of Madhusoodan Ray, Addl. Subordinate Judge of Howrah, dated Sept. 30, 1931, modifying the order of Shaileshchandra Banerji, First Munsif of Howrah, dated July 22, 1929.

(1) (1847) 16 M. & W. 307; (3) (1881) 6 Q. B. D. 548.

153 E. R. 1206.

(4) (1919) 50 Ind. Cas. 872.

(2) (1881) 19 Ch. D. 22.

(5) (1915) 32 Ind. Cas. 232.

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Howrah, setting aside a decree for partition, passed by the Munsif, 1st Court, Howrah, in Title Suit No. 358 of 1928 and remanding the case with a direction that the defendant in the suit should be "allowed to avail himself of the advantage under "section 4 of the Partition Act" (IV of 1893), as he had undertaken to buy the two-thirds share of the plaintiffs, who were the transferees in respect of that share of the property in suit. Upon the findings arrived at by the courts below, the plaintiffs were the holders of the superior interest in the property in question, which is a dwelling house in the sense that it is homestead land with huts standing thereon. Of the three tenants, holding under the plaintiffs, under a lease which gave no transferable right to the tenants, who were members of an undivided family, two surrendered their undivided two-thirds share to the plaintiffs, who are not members of that family. The plaintiffs, thereafter, instituted the suit, out of which this appeal has arisen, for partition, and the plaintiffs' claim in that behalf was resisted by the defendant as a member of an undivided family, who had an undivided share in the property sought to be partitioned. The issue raised by the parties on this part of the case was this: "Is the property liable to "partition in view of section 4 of the Partition Act?" The trial court gave its decision in favour of the plaintiffs, and held that section 4 of the Partition Act had no application to the case. The court of appeal below, on appeal by the defendant, reversed the decision of the trial court, and has remitted the case to that court, with the direction to which reference has already been made. The plaintiffs have appealed to this Court.

The question, arising for consideration in this appeal, is whether the surrender of the two-thirds share by the tenants was a transfer within the meaning of section 4 of the Partition Act, which speaks of a share of a dwelling house belonging to an undivided family being *transferred* to a person who is not a member of such family, of such *transferee*

suing for partition, and of a member of the family being a share-holder undertaking to buy the share of such *transferee*. The word "transfer" has not been defined in any statute law applicable to this country; it has long been recognised to be a technical term of law by the legislature and by the courts of justice. As pointed out by Parke B. in *Burton v. Reeve* (1), when the legislature uses technical language in its statutes, it is supposed to attach to it its technical meaning unless the contrary manifestly appears. See also *Laird v. Briggs* (2), *Attorney-General v. Mitchell* (3). As it has been said, the use of technical terms and technical language is necessary for the purpose of obviating the difficulty that arises by the use of popular expressions in regard to legal subjects. So far as the use of the word transfer in the Partition Act is concerned, the reasonable view to take is that it has been used in the same sense and in the same way as it has been used in the Transfer of Property Act, under which enactment transfer includes sale, mortgage, lease, exchange and gift, so far as vesting of title is concerned. It is worthy of note that the word "surrender" is used in the Transfer of Property Act in connection with determination of a lease (section 111 of the Act), and there is no indication in the enactment that a surrender is a mode of transfer. It may also be noticed that, under the Bengal Tenancy Act, transfer of a holding by a tenant has not been placed on the same footing as a surrender of the same in favour of the landlord. The term "surrender" as distinguished from transfer is very well known in law; a surrender is an yielding up an estate for life or years to him that hath an immediate estate in reversion or remainder wherein the estate for life or years may merge by mutual agreement; it is the falling of a lesser estate into a greater (See Co. Litt. 337b and 338a). In our judgment, it is not possible to hold that surrender by a tenant is transfer

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as contemplated by section 4 of the Partition Act: there is no accrual of title, so far as the landlord is concerned by an act of surrender on the part of the tenant,—surrender having only the effect of merging the lesser estate of the tenant into the greater estate of the landlord. The decisions of the Patna High Court, referred to in the judgment of the court of appeal below, do not rest upon the interpretation of section 4 of the Partition Act, and they do not interpret the word “transfer” as used in that section. In *Jumra Prasad Singh v. Basdeo Singh* (1), one of the cases referred to, it was observed by the learned Judges of the Patna High Court that the surrender by Hindu widow, of a *râiyati* holding, of which she was for the time being in occupation, to her landlord, was a “giving up of a right or interest”, and was a transfer of her limited interest in the holding. If the observation of the learned Judges go against the meaning attaching to the word “surrender” so far as legal interpretation of the word is concerned, and if they go against the meaning of the word “transfer” as far as that meaning can be gathered from the statutory provisions contained in enactments relating to transfer of property,—we dissent from those observations. There can be no doubt that a surrender in certain circumstances may amount to a transfer and operate as such. The case of *Abdul Karim Mean v. Miajan Mianji* (2) decided by this Court is a typical case of that description. The learned Judges deciding that case proceeded on the footing that the surrender of a portion of a joint holding by one of the tenants were not a valid surrender, and such surrender was given effect to as a transfer in favour of the landlord. The question was not, therefore, decided that a surrender was a transfer in all cases. In the case before us the validity of the surrender by the tenants is not in question: it is a valid surrender of an interest in a tenancy which was non-transferable by the terms of the document creating the tenancy. It

(1) (1919) 50 Ind. Cas. 872.

(2) (1915) 32 Ind. Cas 232.

could not, therefore, be said, as it was said in *Abdul Karim Mean's* case (1), referred to above, that the surrender operated as a valid transfer in favour of the landlord. The surrender, in the case before us, was not a transfer as contemplated by section 4 of the Partition Act.

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In the above view of the case, the decision arrived at by the court of appeal below, and the order of remand passed by that court, must be set aside, and we direct accordingly. The decree passed by the court of first instance is restored, as we hold that section 4 of the Partition Act has no application to this case.

The parties are to bear their own costs in this Court and in the court of appeal below.

BARTLEY J. I agree.

*Appeal allowed.*

A. A.

(1) (1915) 32 Ind. Cas. 232.