

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Oldfield.

1887

A UTU SINGH (DEFENDANT) v. AJUDHIA SAHU (PLAINTIFF). \*

---

 January 21.

*Bond—Verbal assignment of rent of land in satisfaction of interest—“Jamog”—Mutation of names in favour of assignee not effected—Suit on bond—Claim for interest notwithstanding assignment—Act IV of 1882 (Transfer of Property Act), s. 131—Evidence—Subsequent oral agreement rescinding or modifying contract registered according to law—Act I of 1872 (Evidence Act), s. 92, proviso (4).*

Subsequent to the execution and registration of a bond, a *jamog* was made orally between the creditor and the debtor by which the former agreed to take the rents of certain tenants of the latter in satisfaction of interest, the latter agreed to release the tenants from payment of rent to himself, and the tenants (who were parties to the arrangement) agreed to pay their rents to the creditor. No mutation of names in favour of the creditor was effected in the revenue registers. The creditor brought a suit against the debtor to recover the principal and interest agreed to be paid under the bond, alleging that he had never received any rents under the *jamog*.

*Held* that whether or not the plaintiff could maintain a suit on the *jamog* against the tenants for the rent assigned to him in the Revenue Court, he could do so in the Civil Court, and the fact that the *jamog* was not in writing did not affect the question. *Ganga Prasad v. Chandrawati* (1) referred to.

*Held* also that the *jamog* was not a subsequent oral agreement rescinding or modifying a contract which was registered according to the law for the time being in force, within s. 92, proviso (4), of Act I of 1872 (Evidence Act).

*Held* that the effect of the *jamog* or novation was that the plaintiff's right to recover interest from the defendant was gone, and the plaintiff was therefore not entitled to maintain his suit against the defendant in respect of the interest which was payable under the bond.

The facts of this case are stated in the judgment of Edge, C. J.

Lala Juala Prasad, for the appellant.

Munshi Sukh Ram, for the respondent.

EDGE, C. J.—This is an action to recover the principal, with interest, agreed to be paid under a bond by enforcement of lien. There is no defence to the claim for the principal. The defendant, as to the claim for interest, in effect, alleges that, subsequent to the making of the bond, a *jamog* was come to, by which the plaintiff agreed to take the rents of certain tenants in satisfaction of the interest, and those tenants agreed to pay those rents to the plaintiff,

---

\* Second Appeal No 423 of 1886, from a decree of J. M. C. Steinbelt, Esq., District Judge of Azamgarh, dated the 10th November, 1885, modifying a decree of Babu Nihal Chundra, Munsif of Azamgarh, dated the 16th June, 1885.

1887

AUTU SINGH  
v.  
AJUDHIA  
SAHU.

and in consequence of that the defendant agreed to release those tenants from the payment of the rent to him. That I understand to be the meaning of the defendant's pleadings. If that be the state of facts, it will be necessary to consider how far it would affect the plaintiff's claim to recover interest on the bond.

Now the Court of first instance found that the *jamog* was agreed to, and allowed the plaintiff's claim for the principal only. In the lower appellate Court it appears, from the judgment of Mr. Steinbelt, that the agreement as to the *jamog* was not disputed, but that the plaintiff said that he had never received any of the rent under that *jamog*. Mr. Steinbelt, taking the view that the *jamog* would be inoperative unless there were mutation of names in the revenue registers, so as to enable the plaintiff to sue the tenants in the Revenue Courts, held that the plaintiff was entitled to the interest which he claimed.

Now, the effect of the *jamog*, as I understand it, was this, that it was in fact a *novation*, by which the landlord—the defendant here—agreed with his creditor and with his tenants that the liability of the tenants for their rent should be transferred from him to the creditor—that is, he in effect assigned, so far as he could, the rent to the creditor, and the tenants, being parties to that arrangement, agreed that they would pay their rent to the creditor, and not to the landlord, and the creditor on his part agreed to accept that agreement in satisfaction of the interest which would otherwise be payable under the bond.

Two points have been urged before us. One is based on the judgment of Mr. Steinbelt—that is, that the plaintiff cannot maintain an action, either in the Civil or the Revenue Courts, on that *jamog* against the tenants. We are of opinion that it is not necessary for us to consider whether the plaintiff could maintain an action on the *jamog* in the Revenue Court or not. He can maintain an action in the Civil Court. It has been so held by this Court in the case of *Ganga Prasad v. Chandrawati* (1). In that case, in which a tenant had, by writing and with the consent of the landlord, agreed to pay rents to a person other than his landlord, it was held that such other person could maintain an action against the tenant in the Civil Courts

(1) I. L. R., 7 All. 256.

for the rents which he agreed to pay to him. I agree with that judgment. It is only necessary to consider whether the fact that the *jamog* in the present case was not in writing makes any distinction between that case and the present. On that point I have asked the learned pleader for the respondent to show any authority that a novation or assignment of rents, such as in this case, must necessarily be in writing. No authority has been suggested on the point, and certainly s. 131 of the Transfer of Property Act does not contemplate that an assignment of a debt should be in writing to enable the assignee to sue. Therefore I am of opinion that there is no practical distinction between the case to which I have just referred and the present case.

It has also been urged that the *jamog* in question falls within s. 92 of the Indian Evidence Act—that is, that it was a subsequent oral agreement, rescinding or modifying a contract which was registered according to the law in force at the time. In the view which I take of the transaction, I do not think it was an agreement in that sense which rescinded or modified a contract. It was an agreement by which the plaintiff accepted, in satisfaction of interest, a *jamog* which bound the tenants to pay the rents to him. It would modify the contract no further than if the plaintiff had accepted, for instance, a present cash payment in discharge of all the interest payable on the bond. It is quite clear that the defendant could give oral evidence that the plaintiff had accepted a present cash payment in satisfaction of all the interest that might become payable in future on the bond. For these reasons I am of opinion that the plaintiff is not entitled to maintain his action against the defendant in respect of the interest which was payable under the bond.

There is only one further observation which I should like to make : that assuming, as I must assume here, that there was this *jamog* or novation, the effect of deciding otherwise would be that the plaintiff could still maintain his action for the interest, although in satisfaction of the interest the defendant had parted for the time with his right to recover rents from the tenants. The effect of the novation is that the right of the creditor to recover interest from the defendant is gone.

1887

AJUBU SINGH  
v.  
AJUDHIA  
SAHU.

1887

AUTU SINGH  
v.  
AJUDHKA  
SAMU.

Under these circumstances the appeal must be allowed and the decree of the Court of first instance confirmed with costs.

OLDFIELD, J.—I entirely concur.

*Appeal allowed.*

1887  
January 21.

*Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Oldfield.*

PARSHOTAM LAL AND ANOTHER (DEFENDANTS) v. LACHMAN DAS  
(PLAINTIFF). \*

*Court-fees—Suit on hundis—Distinct causes of action—Distinct subjects—Act VII of 1870 (Court-fees Act), s. 17.*

In a suit upon three different *hundis* executed on the same date by one of the defendants in favour of the other three defendants and by them assigned to the plaintiff, and not paid on maturity—*held* that each *hundi* afforded a separate cause of action, that the suit embraced three separate and distinct subjects, and that the memorandum of appeal by the first defendant was chargeable with the aggregate amount of the court-fees to which the memoranda of appeal in suits embracing separately each of such subjects would be liable under the Court-fees Act.

THE facts of this case, which was referred to the Court by the Registrar under s. 5 of the Court-fees Act, are sufficiently stated in the judgment of the Chief Justice.

Mr. C. Dillon, for the appellant.

EDGE, C. J.—In this case the defendant No. 1 executed three different *hundis* on the same date, in favour of the defendants Nos. 2, 3, and 4, who constituted a firm. They were all payable at the same time. The first *hundi* was for Rs. 1,133-7, and the second and third were for Rs. 1,054-5 respectively. These three *hundis* were assigned by the defendants Nos. 2, 3, and 4 to the plaintiff, and not having been paid on maturity, the plaintiff brought this action upon them.

The defendant No. 1, who is appealing here, has paid court-fees calculated upon the total amount of the three *hundis*. The question is whether the amount of the court-fees as calculated is sufficient, or whether the defendant No. 1 is not bound, under s. 17 of the Court-fees Act, to pay a court-fee based on the amount of each of the *hundis* separately.

\*Reference under s. 5 of the Court-fees Act.