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*January* 20.

# APPELLATE CIVIL.

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

FATIMA BEGAM (PLAINTIFF) *v.* HANSI (DEFENDANT.) *

*Limitation—Act XV of* 1877 (*Limitation Act*), s. 5—"*Sufficient cause*" *for not presenting appeal within time—Admission of appeal—Discretion of Court—Landholder and tenant—Mortgage by ex-proprietary tenant—Act XII of* 1881 (*N.-W. P. Rent Act*), *ss.* 9, 56, 93 (*b.*)—*Act* "*inconsistent with the purpose for which land was let.*"

The policy of the framers of the N.-W. P. Rent Act (XII of 1881) was not to protect the interest of the purchaser of proprietary rights, but that of the person whose proprietary rights have been sold, and who has become an ex-proprietary tenant.

It would be straining the law as laid down in s. 93 (*b*) of the Act to hold that a mortgage of his holding granted by an ex-proprietary tenant was an act "inconsistent with the purpose for which the land was let" within the meaning of that provision. The words quoted have reference to something which may alter the character of the land, or cause injury to the land and thus to the landholder. In the case of a mortgage by an ex-proprietary tenant, the land-holder would not be damnified by being unable, in the event of his rent being in arrear, to distrain the crops grown upon the land by the so-called mortgagee, s. 56 of the Rent Act giving the land-holder a right to distrain any crops growing upon the land, by whomsoever grown, in respect of which the arrear arises.

*Debi Prasad* v. *Har Dayal* (1) followed. *Wajiha Bibi* v. *Abhman Singh* (2) referred to.

In a suit for ejectment instituted in the Revenue Court under s. 93 (*b*) of the N.-W. P. Rent Act (XII of 1881), the Court gave judgment decreeing the claim on the 15th September, 1884. The value of the subject-matter exceeded Rs. 100, and an appeal consequently lay to the District Judge; but there was nothing upon the face of the record to show that the value exceeded Rs. 100 and that the decree was appealable. The period of limitation for the appeal expired on the 15th October, and the defendant, being under the impression that the decree was not appealable, applied to the Board of Revenue on the 8th January, 1885, for revision of the first Court's decree. The proceedings before the Board lasted until the 24th April, when the defendant for the first time was informed that the value of the subject-matter being over Rs. 100, the decree was appealable, and that the application for revision had therefore been rejected. On the 23rd May, the defendant filed an appeal to the District Judge, who, under s. 5 of the Limitation Act, admitted the appeal and, reversing the first Court's decision, dismissed the claim.

* Second Appeal No. 422 of 1886 from a decree of F. E. Elliot, Esq., District Judge, dated the 6th October, 1885, reversing the decree of Pandit Kedar Nath, Deputy Collector of Allahabad, dated the 15th September, 1884.

(1) I. L. R. 7 All. 691. (2) Weekly Notes, 1883, p. 166.

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*Held*, on appeal by the plaintiff, that, under the circumstances, the High Court ought not to interfere with the discretion exercised by the District Judge in admitting the appeal under s. 5 of the Limitation Act after the period of limitation prescribed therefor.

*Per* EDGE, C. J., that, under the circumstances above stated, he would not himself have held that the defendant had shown "sufficient cause," within the meaning of s. 5, for the admission of the appeal; but that the Court ought not to interfere with the discretion of the Judge when he had applied his mind to the subject-matter before him, unless he had clearly acted on insufficient grounds or improperly exercised his discretion.

THE facts of this case are sufficiently stated for the purposes of this report in the judgment of Edge, C. J.

Pandit *Sundar Lal*, for the appellant.

Munshi *Ram Prasad*, for the respondent.

EDGE, C. J.—This is an action which was instituted in the Revenue Court against an ex-proprietary tenant, and a person who had been put in possession by that ex-proprietary tenant under a document purporting to be a mortgage of the ex-proprietary tenancy. The Revenue Court decreed possession as against the ex-proprietary tenant, and it appears to have given no decree as against the person whom we may call the mortgagee, possibly because the suit against the mortgagee might not have been maintainable in the Revenue Courts. Against that decree in the Revenue Court an appeal was brought to the Judge of Allahabad, who reversed the decision of the Revenue Court and dismissed the claim. The so-called mortgagee was not a party to the appeal before the Judge of Allahabad, or to the appeal which is before us from the decision of the Judge of Allahabad. In this case a preliminary question has been raised as to whether the Judge of Allahabad exercised his discretion properly in admitting the appeal to him after the time for appeal from the decree of the Revenue Court had expired. On this point it is necessary to mention a few dates. The judgment of the first Court was delivered on the 15th September, 1884. Thirty days for appeal to the Judge expired on the 15th October, 1884. Now it appears that the defendant in the action applied to the Court of first instance on the 12th November, 1884, for a copy of the decree, and an order on that was made on that date, and on the 5th December, 1884 a copy of

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the decree was given to the defendant. On the 5th January, 1885, she filed an application for revision of the decision of the Court of first instance to the Board of Revenue. It appears that on the 30th March, 1885 the Revenue Board rejected that application on the ground that the value of the subject-matter of the suit was more than Rs. 100. On the 16th April, 1885 the Revenue Board made an order that the papers should be returned to the defendant, and on the 24th April, 1885 the papers were actually returned to her. The appeal to the Judge was filed on the 23rd May, 1885. I may at once say that if I had been sitting as the Judge of Allahabad, I would not have held that the defendant had shown "sufficient cause" within the meaning of s. 5 of the Limitation Act. The Judge of Allahabad, to whom the application to admit the appeal was made, exercised his discretion and admitted it. In my opinion we ought not to interfere, unless when the Judge has clearly acted on insufficient grounds or has improperly exercised his discretion. We ought not to interfere with the discretion of the Judge when he has applied his mind to the subject-matter before him. However, as I have said before, under these circumstances I would not have admitted the appeal, but I do not see my way to hold that the Judge has so improperly exercised his discretion as to say that the appeal ought not to have been admitted. That disposes of the preliminary point.

Then comes the question as to whether the Judge of Allahabad was right or not in refusing the remedy sought for by the plaintiff. Now, with regard to that part of the case, it appears that the defendant-respondent here was a proprietor of the land in question. In the early part of 1882 her proprietary rights were sold by auction-sale to the present appellant. Further, it appears that on the 11th September, 1882, the respondent, who was then an ex-proprietary tenant, purported to mortgage a portion of the holding to the person whom we have called the mortgagee, and let him into possession. This action was brought on the 4th February, 1884 to eject the ex-proprietary tenant and the so-called mortgagee. The plaintiff alleges in her plaint that she knew of the mortgage on the 13th July, 1883. It does not appear whether she had received any rent after she became aware of the so-called mortgage. Under these circumstances, what is the law? The

plaintiff contends that she is entitled to eject the ex-proprietary tenant, contending that the granting of this mortgage came within clause (*b*) of s. 93 of the Rent Act, and was an act inconsistent with the purpose for which the land was let. In support of that contention the case of *Wajiha Bibi* v. *Abhman Singh* (1) is quoted. That case, I may say, is a case in point, and is in favour of the plaintiff's contention. Looking, however, to the report of that case, I observe this fact as throwing probably some light on the judgment of the learned Judges in that appeal, that the respondents there were not represented and did not appear; so practically the attention of the learned Judges would only be directed to the case put forward on behalf of the appellants. On the other side, however, Mr. *Ram Prasad* has relied upon a later decision of 1885—*Debi Prasad* v. *Har Dayal* (2), in which Mr. Justice Mahmood held that the granting of a mortgage by an ex-proprietary tenant was not an act inconsistent with the purpose for which the land was let. I am bound to say that I agree with the judgment of Mr. Justice Mahmood in that case. I think myself that the words "inconsistent with the purpose for which the land was let" must have reference to something which may alter the character of the land, or cause injury to the land or the landlord: for instance, turning *sir* land into a building-land, or excavating it for a tank, or, probably, cutting down a valuable grove. In fact, I think that something of that kind was intended by the Legislature when they used the word "inconsistent." In all the above cases it is obvious that the act of the tenant would alter the character of the land or might damage the land, and thus cause damage to the landlord. Therefore in such cases the law provides that the landlord should have his remedy by turning the tenant out of possession of the land. I fail to see how, in the case of a mortgage by an ex-proprietary tenant, the landlord could be damnified.

It is said by Pandit *Sundar Lal* that the landlord would be damnified in this way: that if his rent was in arrear, he would not be entitled to distrain the crops grown upon the land by the so-called mortgagee. With that contention I do not agree. It appears to me that s. 56 of the Rent Act gives the landlord a right to distrain any crops growing upon the land, by whomsoever

(1) Weekly Notes, 1883, p. 166. (2) I. L. R. 7 All. 691.

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grown, in respect of which the arrear arises. I cannot see how, in a case like this, the landlord could be in any way damnified or injured by the mortgage.

Now, further, it appears to me also that the policy of the framers of the Rent Act was not to protect the purchaser's interest, but that of the person whose proprietary rights had been sold, and who had become an ex-proprietary tenant. And I think we should be straining the law if we were to hold that a mortgage granted by an ex-proprietary tenant was an act which was contemplated by the Legislature as coming within the words "inconsistent with the purposes for which the land was let."

Under these circumstances, I am of opinion that the appeal should be dismissed with costs.

OLDFIELD, J.—I have only to say, with regard to the question of limitation, that I would not interfere with the discretion of the Judge. The defendant, after the decree was passed against her, went to the Board of Revenue in revision under the impression that the decree was final and no appeal lay to the Judge. And whether an appeal would lie or not was entirely dependent on the value of the subject-matter in dispute. There is nothing on the face of the record which would lead necessarily to the conclusion that the value of the subject-matter was over Rs. 100, and therefore that the decree was appealable. These considerations undoubtedly actuated the Judge in admitting the appeal after time. Then we find that the proceedings before the Board of Revenue appear to have lasted up to the 24th of April, 1885, when the result was intimated to the defendant. There is nothing to show that she was aware of that result before, and after that time she did not delay in filing the appeal. These are the circumstances, I think, which actuated the Judge in admitting the appeal after time. I therefore think that I should not interfere with the discretion exercised by the Judge.

On the other point, I entirely concur with what has fallen from the learned Chief Justice and with the order he proposes to pass.

*Appeal dismissed.*