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affirmance, but a decree modifying the original decree of the 29th September 1885, and this circumstance in my opinion distinguishes this case from the cases above referred to. After having fully heard the arguments, I am of opinion that the learned Judge has arrived at a correct conclusion, and I dismiss the appeal, but without any order as to costs, as the respondent is not represented.

Appeal dismissed.

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May 26.

Before Mr. Justice Straight and Mr. Justice Knox.

GAYA SINGH AND OTHERS (DEFENDANTS) v. UDIT SINGH (PLAINTIFF).*

*Ex-proprietary tenant--Relinquishment of ex-proprietary rights--Act XII of 1881
(North-Western Provinces Rent Act) s.s. 9, 31.*

Though an ex-proprietary tenant cannot transfer his rights as such for a consideration, there is nothing to prevent his voluntarily relinquishing those rights.

The facts of this case are fully stated in the judgment of Straight, J.

Mr. Niblett, for the appellants.

Mr. Abdul Majid, for the respondent.

STRAIGHT, J.—It is necessary in order to explain the conclusion at which I have arrived to state in detail the facts of this case. One Gaya Singh and his brother Kunj Behari and his son Baldeo were the owners of a certain *bighadam* zamindari interest in the Azamgarh district. Appurtenant to that *bighadam* interest was an interest in certain *ser* lands which were cultivated by Gaya Singh, his brother and his son. The present plaintiff-respondent, Udit Singh, brought a suit against Gaya Singh, and in execution of his decree sold the property and purchased it at auction. Subsequently to that purchase Kunj Behari and Baldeo Singh, the brother and son of Gaya Singh, brought a suit to avoid that auction purchase, and made as parties thereto the present plaintiff, Udit Singh and Gaya Singh. That suit was dismissed by the first Court, and thereupon the plaintiffs appealed to the Court of

* Second appeal No. 1508 of 1888 from a decree of E. Galbraith, Esq., District Judge of Azamgarh, dated the 5th June 1888, confirming a decree of Munshi Man Mohan Lal, Sub-ordinate Judge of Azamgarh, dated the 30th November 1887.

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the District Judge. While that appeal was pending, the parties entered into a compromise, the effect of which was that the plaintiffs' suit was to be decreed to the extent of $\frac{2}{3}$ of the property and dismissed as to the residue. In that compromise to which all the parties to the suit were joined, Gaya Singh relinquished his rights in the $\frac{1}{3}$ property in favor of the present plaintiff, Udit Singh, and he declared that he would not now or at any future time make any claim to the *sir* land or raise any claim to his ex-proprietary rights. Upon the basis of that compromise a decree was prepared on the 7th April 1885. By that decree $\frac{2}{3}$ of the plaintiffs' claim was decreed and the rest of their claim was dismissed. On the 5th July 1887, the plaintiff Udit Singh came into Court with his present suit, and, to put it shortly, he alleged that, subsequently to the decree of the 7th April 1885, having obtained possession of $\frac{1}{3}$ of the *sir* appertaining to the $\frac{1}{3}$ zamindari interest of Gaya Singh, namely, on the 26th of July 1885, and having cultivated the same, he was, upon the 6th December 1885 disturbed in the possession of that $\frac{1}{3}$, *sir* the crops that he had planted removed, and up to the date of suit he had been kept out of possession, and therefore claimed a decree for joint possession of 6 bighas, 10 biswansis, $13\frac{1}{2}$ dhurs out of 19 bighas, 12 dhurs, representing the $\frac{1}{3}$ interest of Gaya Singh, and for damages in shape of profits of which he had been deprived amounting to Rs. 286-15-11. The first Court decreed the plaintiff's claim in part, though it negatived his allegation that he had obtained possession of the *sir*, and also gave him Rs. 103-6-4 as damages. The lower appellate Court, to which an appeal was preferred by the defendants, upheld that decision by the first Court, specifically holding that by the terms of the compromise and decree Gaya Singh had relinquished his ex-proprietary rights. It is contended, now, in second appeal on behalf of the defendants-appellants that what was done at the time of the compromise of 1885 amounted to a transfer by Gaya Singh of his ex-proprietary interest, and that in that case, such transfer, being prohibited by law, could not be recognised, and that, although the defendants had been

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parties to that compromise, they were nevertheless entitled to maintain the plea they have now taken and to set up the illegality of the transaction to which they were parties. No doubt there is authority for that latter contention in the case of *Phalli v. Matabzadal* (1) and I am not going to depart from what I said on that occasion, nor am I going to hold that the defendants cannot make the defence they have set up. But the question that arises to my mind is whether what was done at the time of the compromise amounted to a transfer of ex-proprietary rights. Now it would not be denied for a moment that if there had been a transfer for a consideration, either in money or in other respects, of that ex-proprietary holding it would have been prohibited by law and could not have been recognised by this Court. But in the Full Bench case of *Gulab Rai v. Indar Singh* (2) it was indicated that, although a transfer would be prohibited by law, yet that the question of a simple relinquishment might stand upon a different footing, and it left that point open for determination upon a subsequent occasion.

Now as I understand the Rent Act, and indeed I have expressed myself fully as to the meaning of s. 9 of the Rent Act in the Full Bench case last referred to, the law prohibits an occupancy-tenant not at fixed rate from transferring his holding; but it also provides within the four corners of the Act that he may relinquish his holding in such a way as to relieve himself from liability for the rent of the same, and the one mode in which that is to be done is provided in s. 31 and the following sections of the Act. If then, for the purpose of relieving himself from his liability to rent, a tenant may relinquish his holding, I cannot understand why there should be any general prohibition, either on grounds of public policy or other grounds, to prevent a man saying:—"I no longer desire to cultivate this particular land, or to exercise this particular right of tenancy, or to remain in occupation of this particular piece of land." And unless I see that there is in the statute a very clear and distinct prohibition to his doing so,

(1) Weekly Notes, 1883, p. 7.

(2) Weekly Notes, 1883, p. 207.

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I shall certainly not go to the length of holding that there is any such prohibition. It is not pretended that the ex-proprietary interest acquired by Gaya Singh upon the sale of his proprietary rights to the plaintiff was sold or transferred to the plaintiff for money consideration or the equivalent. What the compromise does say is that Gaya Singh undertakes never, now or at any future time, to make any claim to the *sir* land or to raise any claim to his ex-proprietary rights. I need not discuss the possible difficulty that might arise in regard to the other incidents of s. 9 of the Rent Act, namely, that which is concerned with the rights and interests of the parties interested in the cultivation with the occupancy-tenant, because in this particular case those parties joined in the compromise by which Gaya Singh made the relinquishment that he did.

Under these circumstances I am of opinion that the lower appellate Court took a right view and placed a proper construction upon what was done by Gaya Singh at the time of the compromise of 1885, and that the decree has been rightly given to the plaintiff by which he has been declared entitled to participation in the *sir* appertaining to the zamindari interest to the extent of a $\frac{1}{3}$ interest in the *sir* enjoyed by Gaya Singh who relinquished all claims to that interest.

I dismiss the appeal with costs.

KNOX, J.—I will not go over the facts of this case, as they have already been fully given by my learned brother Straight. I fully concur in what has been said and in the decree which he proposes to pass in this appeal. From a careful consideration of the facts of this case, and more especially from the terms in which the compromise is expressed, I am of opinion that Gaya Singh when he had executed the compromise then and there did not transfer, but voluntarily abandoned, his ex-proprietary rights in the *sir* land. The words used in the compromise which relate to the transfer of zamindari rights differ from those which relate to the abandonment of the ex-proprietary tenure. The words are these :—

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“Ek suls hissa par Udit Singh mudailah mai jumla hakuq zamindári mai ek suls haq sár sakit-ul-milkiyat va do suls hissa par mudai malikana va zamindárana kabiz va dakhil rahe aur ek suls haq kasht sakit-ul-milkiyat se musta’fi hain.”

I see nothing in the Rent Act of 1881, by which any such voluntary vacation of tenure by a person who has acquired an ex-proprietary right is prohibited.

For these reasons I agree in the decree proposed.

Appeal dismissed.

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June 2.

Before Mr. Justice Mahmood.

RAM LAL DUBE AND OTHERS (JUDGMENT-DEBTORS) v. HAR NARAIN AND ANOTHER (DECREE-HOLDERS).*

Execution of decree—Decree conditional on payment of a sum certain within a fixed time—Payment after time specified in decree.

A Court having framed a decree conditioned on the payment by the plaintiff of a sum certain within a specified time has no power to extend the time for payment after the period mentioned in the decree has elapsed. *Raja Har Narain Singh v. Chaudhrai Bhagwant Kuar* (1) referred to.

The facts of this case sufficiently appear from the judgment of Mahmood, J.

Mr. *Niblett*, for the appellants.

Munshi *Jwala Prasad*, for the respondents.

MAHMOOD, J.—The facts of this case as they have been put before me by Mr. *Niblett* for the appellants and Mr. *Jwala Prasad* for the respondents, may be stated to be the following:—

The decree-holders, respondents, are alleged to have executed a usufructuary mortgage with possession in favor of the judgment-debtors, appellants, about thirty years ago. Under the mortgage the mortgagees are admitted to have been placed in possession, and on the 2nd October 1888, the decree-holders, respondents, obtained

* Second appeal No. 35 of 1890 from a decree of E. J. Kitts, Esq., District Judge of Jaunpur, dated the 19th September 1889, confirming a decree of Babu Pro-motho Nath Banerji, Munsif of Jaunpur, dated the 15th July 1889.