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LACHMI
PRASAD
v.
NARENDRO
KISHORE
SINGH.

of the High Court, and dismiss this appeal. The appellant must pay the costs of the appeal.

Appeal dismissed.

Solicitors for the appellant:—Messrs. *Hanken Ford, Ford, and Chester.*

Solicitors for the respondent:—Messrs. *T. L. Wilson and Co.*

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January 28.

APPELLATE CIVIL.

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

GAYA PRASAD (DEFENDANT) v. BALJ NATH AND ANOTHER (PLAINTIFFS)*

Lease—Assignment by the Official Liquidator of lease held by a Company in liquidation—Assignment not in writing registered—Suit for rent—Use and occupation.

In the course of the winding up of a Company, the Official Liquidator, with the sanction of the Court, sold the remainder of a lease for a long term of years reserving a rent, which was held by the Company. No written assignment was ever executed, but the Official Liquidator handed over the lease to the purchaser, who entered into possession. In a suit by the lessors against the purchaser for rent,

Held that whether the assignment was invalid because not in writing and registered, or whether it fell within s. 2 (d) of the Transfer of Property Act (IV of 1882), the defendant, even if not liable as assignee in law of the lease, was liable for rent as for the use and occupation, and under such circumstances the rent fixed by the lease would be a fair basis for the amount to be decreed.

THE facts of this case sufficiently appear from the judgment of the Court.

The Hon. *G. T. Spinkie*, Mr. *Mehdi Hasan* and Babu *Rajendro Nath Mukarji*, for the appellant.

* Second Appeal No. 671 of 1890, from a decree of G. J. Nicholls, Esq., District Judge of Cawnpore, dated the 20th March 1890, confirming a decree of Maulvi Akbar Husain, Subordinate Judge of Cawnpore, dated 4th February 1890.

Mr. *T. Conlan* and *Munshi Ram Prasad* for the respondent.

EDGE, C. J., and *TYRRELL, J.*—This was a suit for rent. The plaintiffs suit was decreed by the first Court, and the defendant's appeal was dismissed by the lower appellate Court. The facts of this case are as follows :—

On the 1st December 1883, the plaintiffs granted a lease of the land and the buildings thereon in the city of Cawnpore to the Cawnpore Cotton Ginning Company for a long term of years, reserving a rent. The deed contained several covenants to be performed by the lessors, their successors and assignees.

The Company got into difficulties and was wound up under the Indian Companies Act, 1883. In the process of winding up, the Official Liquidator, with the sanction of the Court, sold the property of the Company in the land in question, that is, their interest in the lease, by auction. The defendant was the purchaser. There was no written assignment ever executed, although the sale took place as far back as the 11th October 1886. The Official Liquidator handed over the lease to the defendant and the defendant entered into possession of the land included in the lease and the buildings and the property thereon. If the defendant is liable as assignee of the lease, the plaintiffs are entitled to the decree for rent and interest which they have obtained. If, on the other hand, by reason of there having been no assignment in writing registered of the lease he is not in law, according to the Transfer of Property Act, the assignee of the lease, it does not follow in our opinion that he is not liable for the amount which has been decreed. It has been contended on behalf of the plaintiffs that the sale having been effected under an order of a competent Court sanctioning the act of the Official Liquidator, s. 2, (d) of the Transfer of Property Act, 1882, applies, and excluding the transaction from the requirements of that Act, the defendant is in law the assignee of the lease. It is undoubted that everything was done to make him assignee of the lease unless the case comes within the Transfer of Property Act. It is by no means easy to say whether or not the sale in the present case was within the meaning of s. 2 (d) of that Act, a transfer by or in

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execution of an order of a Court of competent jurisdiction. Certainly without the order sanctioning the sale the defendant would have got no title from the Official Liquidator. In one sense it might be considered that the transfer in question was in execution of the order which was made. However that may be, we do not think it necessary actually to decide whether s. 2 (d) of the Transfer of Property Act, 1882, applies. Assuming for the moment that the sale in this case was not a transfer within the meaning of s. 2 (d), and that consequently there has been no good assignment under the Transfer of Property Act, 1882, of the lease with its benefits and liabilities to the defendant, we are of opinion that he still is liable for the amount claimed. He purchased the interest of the Company at the sale, he got, and holds, possession of the lease, and he took, and since the date of the sale has held, possession of the land and buildings thereon. He cannot be treated as a trespasser. Although in one sense his title may be infirm, he was let into possession by the Official Liquidator acting under the sanction of the Court. In the latter view, we consider that for the time in respect of which the suit is brought the defendant, even if not liable as assignee in law of the lease, is liable for rent as for the use and occupation, and under such circumstances the rent fixed by the lease would be a fair basis for the amount to be decreed. The result is that in whichever aspect the defendant's possession is regarded, and, whichever may be the true view of that position, the defendant in our opinion is liable for the amount decreed. That decree we shall not disturb. We ought to say in conclusion that Official Liquidators who take leases and subsequently as such Liquidators sell the interest of the lessee had better, for their own protection and to avoid any question as to their continuing liability, execute in favour of the purchasers written assignments of the leases and see that they are registered. We dismiss the appeal with costs.

Appeal dismissed.