

1885

Babu *Dwarka Nath Banarji* for the appellant.Munshi *Sukh Ram* for the respondent.

BAGHUNATH
DAS
v
RAJ KUMAR.

The Full Bench (PETHERAM, C. J., and STRAIGHT, BRODHURST, and TYRRELL, J.J.) concurring with the judgment of MAHMOOD, J., allowed the application with costs to the petitioner.

1885
July 6.

*Before Sir W. Comer Petheram, Kt., Chief Justice, Mr. Justice Straight,
Mr. Justice Brodhurst, and Mr. Justice Tyrrell.*

JHINGURI TEWARI AND OTHERS (PLAINTIFFS) v. DURGA AND OTHERS
(DEFENDANTS). *

Act XVIII of 1873 (N.-W. P. Rent Act), s. 9—Sale of occupancy-rights with zamindar's consent—Acceptance of rent by zamindar from vendees—Act IX of 1872 (Contract Act), ss. 2, 23—Estoppel—Act I of 1872 (Evidence Act), ss. 115, 116.

Under a deed dated in 1879, the occupancy-tenants of land in a village sold their occupancy-rights, and the zamindars thereupon instituted a suit for a declaration that the sale-deed was invalid under s. 9 of Act XVIII of 1873 (the N.-W. P. Rent Act in force in 1879), and for ejectment of the vendees, who had obtained possession of the land. It was found that the zamindars had consented to the sale to the vendees, and received from them arrears of rent due on the holding by the vendors, and had recognized them as tenants.

Held by the Full Bench that the sale-deed was invalid with reference to the provisions of ss. 2 and 23 of the Contract Act, inasmuch as its object was the transfer of occupancy-rights, which was prohibited by s. 9 of Act XVIII of 1873.

Held also, that s. 115 of the Evidence Act implies that no declaration, act, or omission will amount to an estoppel, unless it has caused the person whom it concerns to alter his position, and to do this he must both believe in the facts stated or suggested by it, and must act upon such belief; that in the present case it could not be said that the vendees were misled by the fact that the zamindars were consenting parties to the sale-deed; that they could not plead ignorance that the deed was unlawful and void; that it had not been shown that they acted upon the zamindars' agreement to take no action, so as to alter their position with reference to the land; and that, under these circumstances, the zamindars were not estopped from maintaining that the sale-deed was invalid.

Held also that the zamindars having accepted the vendees as tenants and taken rent from them, a tenancy was thereby constituted under the Rent Law; that the vendees were therefore not trespassers; and that therefore the question as to ejectment did not fall within the jurisdiction of the Civil Court.

The judgment of OLDFIELD, J. (1) reversed, and that of MAHMOOD, J. (2) affirmed.

* Appeal No. 4 of 1885, under s. 10, Letters Patent.

(1) *Ante*, p. 515. (1) *Ante*, p. 512.

1885

 JHANGURI
 TEWARI
 v.
 DURGA.

UNDER a deed dated the 5th July, 1879, Gopal and Jai Ram, the occupancy-tenants of certain land in a village called Shikari-pur, sold their rights to Durga and Mahadeo, the defendants in this suit, for Rs. 700. The present suit was brought by the zamindars of the village, in July, 1883, for a declaration that the sale-deed was invalid under s. 9 of Act XVIII of 1873 (the N.-W. P. Rent Act in force in 1879), and for ejection of the vendees, who had obtained possession of the land.

The Court of first instance (Munsif of Benares) dismissed the suit, on the ground that the plaintiffs had consented to the sale, and had recognized the vendees as tenants by accepting rent from them, and that Act XVIII of 1873 did not prohibit a sale of occupancy-rights made with the consent of the landlord. On appeal by the plaintiffs, the District Judge of Benares reversed the Munsif's decision, and decreed the claim. He did not, however, record any definite finding as to whether or not the plaintiffs had consented to or acquiesced in the sale. The defendants appealed to the High Court. The Court (Oldfield and Mahmood, JJ.) remitted issues for trial by the lower appellate Court, and from the findings upon those issues, it appeared that the plaintiffs had consented to the alienation, and had recognized the defendants as tenants.

On the case coming again before the Court, Oldfield, J., was of opinion that the decree of the lower appellate Court should be reversed, and that of the first Court restored, dismissing the suit with all costs. Mahmood, J., on the other hand, was of opinion that the decree of the lower appellate Court should be upheld so far as it declared the sale-deed to be void, and that the suit should be dismissed so far as the claim for ejection was concerned, leaving the plaintiffs to their proper remedy in the Revenue Court. The judgments of their Lordships will be found reported at pp. 512 and 515, *ante*. The plaintiffs appealed, under s. 10 of the Letters Patent, to the Full Court, from the judgment of Oldfield, J.

Munshi *Hanuman Prasad* and *Lala Juala Prasad*, for the appellants.

Lala Lalta Prasad, for the respondents.

1885

JHINGURI
TEWARI
v.
DURGA.

The following judgment was delivered by the Full Bench :—

PETHERAM, C. J., STRAIGHT, BRODHURST, and TYRRELL, JJ.—
The order we propose to pass in this case is that proposed by Mr. Justice Mahmood, namely, “ that the decree of the lower appellate Court should be upheld so far as it declares the sale-deed to be void, and that the suit should be dismissed so far as the claim for ejectment is concerned, leaving the plaintiff to his proper remedy in the Revenue Court.”

The reasons for this order have been so fully explained in the judgment of Mr. Justice Mahmood, that is unnecessary for us to say more than that we agree with him.

1885
July 6.

Before Sir W. Comer Petheram, Kt., Chief Justice, Mr. Justice Straight,
Mr. Justice Brodhurst, and Mr. Justice Terrell.

SHEOBARAN (DEFENDANT) v. BHAIRO PRASAD AND OTHERS (PLAINTIFFS)*

Landholder and tenant—Suit by landholder for declaration of right to take land from occupancy-tenant for cultivation of indigo—Wajib-ul-arz—Act I of 1877, (Specific Relief Act), s. 42.

THE zamindars of a village sued an occupancy-tenant for a declaration of their right to maintain a custom which was thus recorded in the *wajib-ul-arz*:—“ when necessary, one or two bighas out of the tenants’ lands are taken with their consent (*ba khushi*) for sowing indigo.” Upon the basis of this entry, they claimed to be entitled to take a portion of the occupancy-holding at a certain period of the year, for the purpose of cultivating indigo.

Held by the Full Bench that the word “ *khushi* ” used in the *wajib-ul-arz* indicated that the land was only to be taken with the occupancy-tenant’s consent, and the document created no right of the nature alleged, namely to take the land despite the tenant.

Per TYRRELL, J.—That the suit was not maintainable under the special provisions of the Specific Relief Act (I of 1877).

THE plaintiffs in this case, Bhairo Prasad Singh and Bageshar Singh, the zamindars of a village named Pipri, claimed a declaration of their right to take a portion of the cultivatory holdings of the tenants of the village for sowing indigo. The claim was based on custom. The defendant, by caste a *Lunia*, was an occupancy-tenant of land in the village. It appeared that the plaintiffs had

* Second Appeal No. 1141 of 1884, from a decree of G. J. Nicholls, Esq., Offg. District Judge of Azamgarh, dated the 12th June, 1884, affirming a decree of Kazi Muhammad Wais, Munsif of Azamgarh, dated the 20th March, 1884.