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MEGHAI
v.
SHEODHIK

the Madras High Court in *Pitchi v. Ankappa* (1) *Kottalanada v. Muthayya* (2) and of the Calcutta High Court in *Kála Chand v. Gudadhur Biswas* (3) and *Nedaram Thakur v. Joonab* (4).

I set aside the order of the Magistrate, and direct the compensation awarded to be refunded.

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May 2.

APPELLATE CIVIL.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Blennerhassett.
BADRI PRASAD (DEFENDANT) v. SHEODHIAN AND ANOTHER (PLAINTIFFS)*

Landlord and tenant—Occupancy tenant—Lease of occupancy holding—Relinquishment of holding pending terms of lease—Act No. XII of 1881, Section 31.

Where an occupancy tenant grants a lease of land forming part of his occupancy holding for a term of years he cannot during the subsistence of such term relinquish his holding to the zamindar so as to put an end to his lessee's rights under the lease. *Khiali Ram v. Nathu Lal* (5), *Hoolassee Ram v. Pursotum Lal* (6), *Heeramonee v. Ganganarain Roy* (7), and *Nehaloonnissa v. Dhunoo Lall Chowdry* (8), referred to; *Sekru v. Tafazzul Husain Khan* (9), distinguished.

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

Pandit *Madan Mohan Malaviya* for the appellant.

Mr. *J. Simeon* for the respondents.

EDGE, C. J., and BLENNERHASSETT, J.—This is a suit for ejectment. One Jodha Singh was a zamindar of mahals in the village which were known as the western, eastern and intermediate mahals. On the 20th of August 1891, the plaintiffs to this suit purchased at a sale under a decree against Jodha Singh his interest in the western and intermediate mahals. On the 11th of June 1892, Jodha Singh, sub-let to the defendant in this suit his ex-proprietary holdings in the western and intermediate mahals and let to the

* Second Appeal No. 162 of 1894 from a decree of Pandit Raj Nath Sahib, Subordinate Judge of Moradabad, dated the 4th December 1893, reversing a decree of Babu Ramdhan Mukerji, Munsif of Chandausi, dated the 14th September 1893.

(1) I. L. R., 9 Mad. 102.

(5) I. L. R., 15 All., 219.

(2) I. L. R., 9 Mad. 374.

(6) N.-W. P., H. C., Rep., 1871, p. 63.

(3) I. L. R., 13 Calc. 304.

(7) 10 W. R., 384.

(4) I. L. R., 23 Calc. 248.

(8) 13 W. R., 231.

(9) I. L. R., 16 All., 398.

defendant two plots in the eastern mahal. The term of the lease was twelve years. On the 30th of October 1892, the plaintiffs by a private contract purchased Jodha Singh's share in the eastern mahal. On the 1st of November 1892, Jodha Singh purported to relinquish, and did so far as he could relinquish, his rights to the plaintiffs in all the three mahals. Plaintiffs brought this suit on the 20th of June 1893, to eject the defendant, contending that by reason of the relinquishment of the 1st of November 1892, the defendant had no longer any title to the possession of any of the three mahals. It was contended before us that as the Rent Act (Act No. XII of 1881), by section 31 recognized the right of an ex-proprietary tenant to relinquish his holding, Jodha Singh, notwithstanding the lease granted by him on the 11th of June 1892, which was still current, was entitled to relinquish his holdings, and to determine not only his interest but the right of the sub-tenant also.

We will deal first with the case so far as it relates to the claim of the eastern mahal. At the time when Jodha Singh granted the lease of 1892, his position was that of a zamindar and not of an ex-proprietary tenant, consequently the lease being a registered lease granted by a zamindar having full power to grant it, would not be defeated by any subsequent assignment or relinquishment by Jodha Singh. It was not a sub-lease *quâ* the two plots in the eastern mahal. It was a lease direct from a zamindar and we fail to see how the transferee in title of the zamindar, can dispute the lease granted by his predecessor in title or how he can bring this suit in a Civil Court to eject a tenant holding under a lease from a zamindar, it not being a lease to which the proviso to section 40 of Act No. XII of 1884 applies. The plaintiff's suit *quâ* two plots must fail on two grounds: in the first place the Civil Court cannot entertain this suit, in the second place the plaintiffs cannot question the validity of the lease granted by their predecessor in title when he was a zamindar and had full power to grant the lease.

Now as to the claim in respect of the holdings in the western and intermediate mahals. It has been decided in this Court that

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it is perfectly lawful for an ex-proprietary tenant or any other occupancy-tenant to sub-let his ex-proprietary or any other occupancy holding. We pointed out in *Khichi Ram v. Nathu Lal* (1), that an occupancy-tenant by sub-letting could create no rights which would prevent the zamindar obtaining ejectment of the occupancy-tenant and his sub-tenant in case of non-payment or on a forfeiture of the lease, and that such sub-tenant does not become the tenant of the zamindar and his interest subsists no longer than the right of occupancy subsists. That is a perfectly good proposition of law and consistent with the view we take in this case. It is a well recognized principle of law that a man shall not be allowed to do anything to defeat his own grant. Applying that principle to this case it prevents Jodha Singh making an effectual and voluntary relinquishment of his ex-proprietary rights and prevents us from recognizing the so-called relinquishment of the 1st of November 1892 as a relinquishment which has determined the ex-proprietary rights of Jodha Singh and determined the subsisting rights of the sub-tenant, the defendant-appellant. That is a principle in no way at variance with the principle of Act No. XII of 1881. It is a broad principle of equity, justice and common sense that a man having created a tenancy in favour of another to whom he sub-lets shall not, without the consent of that other, be allowed voluntarily to relinquish his tenancy and his title to the detriment of the sub-lease. To some extent that principle was recognised in the case of *Hoolasee Ram v. Pursotum Lal* (2). The learned Judges in that case, however, seem to have been under the impression that an occupancy-tenant could not grant a lease unless allowed to do so by custom, and that a custom might exist which would enable an occupancy-tenant to grant a lease which would entitle the sub-tenant to remain in possession after the determination of the occupancy-right by ejectment. In our opinion it is not necessary that there should be custom entitling an occupancy tenant to grant a lease. There is nothing in Act No. XII of 1881 to prevent an occupancy-tenant granting a sub-lease. On the

(1) I. L. R., 15 All., 219.

(2) N.-W. P., H. C., Rep. 1871, p. 63.

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other hand a custom would be bad which would enable an occupancy-tenant to sub-let by a lease which would continue effectual after the occupancy-right is determined by ejection or forfeiture. That may be gathered from the judgment of the Full Bench in the case of *Khiabi Ram v. Nathu Lal* (1). It was contended by Mr. *Simeon* that the decision in *Sukru v. Tafazzul Husain Khan* (2), shows by analogy that the relinquishment by Jodha was good as against the defendant sub-tenant. The case of *Sukru v. Tafazzul Husain* was a case in which an occupancy-tenant gave a simple mortgage of his occupancy holding. The mortgagee brought a suit for sale, put up the occupancy holding to sale and purchased it himself, and then sought possession. What was held in that case was that the decree-holder acquired no title to possession by his purchase, as the particular occupancy-right was one the transfer of which was prohibited so far as the mortgagee purchaser was concerned, by section 9 of Act No. XII of 1881, and that the purchaser could obtain no benefit by falling back on his simple mortgage as mortgagee, if he could fall back upon it then, because a simple mortgagee would not be entitled to possession.

The result is that we hold that Jodha Singh by reason of the lease which he granted to the defendant, which he was capable of granting at the time when he did grant it and which was a valid and continuing lease on the 1st of November 1892, was incapable of making a voluntary relinquishment of his ex-proprietary interest and of defeating the lease which he had granted.

As bearing to some extent on the question argued before us we may mention *Heeramonee v. Ganganarain Roy* (3) *Nehaloonissa v. Dhunoo Lall Chowdry* (4).

We allow the appeal with costs. We set aside the decree of the lower appellate Court and restore that of the first Court.

Appeal decreed.

(1) I. L. R., 15 All. 219.

(2) I. L. R., 16 All, 398.

(3) 10 W. R., 384.

(4) 13 W. R., 281.