

FULL BENCH.

*Before Mr. Justice Mitter, Mr. Justice Prinscp, Mr. Justice Wilson,
Mr. Justice Tottenham, and Mr. Justice Norris.*

ABDUL AZIZ KHAN (PLAINTIFF) v. AHMED ALI (DEFENDANT).*

1887
April 15,

*Enhancement of rent, Suit for—Transferable tenure—Mutation of names—
Tenant who has transferred his holding, Liability of.*

The main object of a suit for enhancement is to have the contract between the landlord and tenant as regards the rate of rent re-adjusted.

In a suit for enhancement it was found that the defendant had, prior to institution, sold his holding, which by custom was transferable without the consent of the landlord to a third party. There had been no mutation of names, or payment of a *nazar*, or execution of a fresh lease; but the landlord had received rent from the third party and was fully aware of the transfer.

Held, that the connection of the defendant with the holding had come to an end, and the suit against him did not lie.

ABDUL AZIZ and others brought a suit against Ahmed Ali for recovery of rent in respect of a holding at an enhanced rate after service of notice. The Munsiff, finding that the defendant had long before the institution of the suit sold the holding to one Abdul Karim, a third party, who had since paid the rent and was known by the plaintiff and his tahsildars to be the real tenant, held that Ahmed Ali was no longer liable for rent in respect of the holding, and dismissed the suit, but without costs, as the defendant had neglected to cause the transfer to be registered in the zemindar's *serishita*. On appeal the District Judge remanded the case under s. 566 of the Civil Procedure Code for the trial of this issue, namely, "whether by the custom of the locality where this land is situated, such holdings as defendant's, are transferable, and whether the landlord's consent is necessary to the validity of such transfers." The Munsiff found that the ryoti holding, like that of the defendant, was transferable without the previous sanction of the zemindar; but the *dakhilas* were issued in the vendor's name until mutation of names was effected in the landlord's

* Full Bench Reference in Appeal under s. 15 of the Letters Patent, against the decree of Mr. Justice McDonell, dated the 26th March, 1886, in Appeal No. 2364 of 1885, against the decree of the Judge of Noakhali, dated the 11th of August, 1885, affirming the decree of the Munsiff of Shudaram, dated the 19th of April, 1884.

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serishla by payment of *nazar* and execution of a fresh lease. The lower Appellate Court accepted the finding of the Munsiff, and, being satisfied that the plaintiff had recognised "the transfer of the defendant's ryoti to the purchaser," dismissed the appeal.

The plaintiff preferred an appeal to the High Court, which was dismissed by McDonell, J. On appeal against that decision under s. 15 of the Letters Patent, Petheram, C.J., and Cunningham, J., referred to a Full Bench the following question: "Having regard to the facts found in this case, we refer the question to a Full Bench, whether in the case of a holding held under the custom found by the Munsiff under the order of remand (by the District Judge), the vendor is released from liability for the rent before mutation of names has been effected, the *nazar* paid and a fresh lease executed, or before any or either of these things has been done."

The case then came up before the Full Bench.

Baboo *Rajendra Nath Bose* for the appellants.

Baboo *Aukhil Chunder Sen* for the respondent.

The judgment of the Court (MITTER, PRINSEP, WILSON, TOTTENHAM and NORRIS, JJ.) was as follows:—

This is a suit for a recovery of rent at an enhanced rate after service of notice. The finding of the lower Courts is that the holding, in respect of which the enhanced rent is claimed had, before the institution of the present suit, been transferred by the defendant to a third party who is not a party to it, and that such transfer without the previous sanction of the plaintiff, the landlord, is valid.

The main object of a suit for enhancement is to have the contract between the landlord and tenant as regards the rate of rent readjusted. The law allows this readjustment in certain cases. In this case the plaintiff, as found by the lower Courts, was fully aware that the holding is now the property of a third party and not of the defendant. That being so, a suit for enhancement of rent will not lie against the defendant who has now no connection with the holding. We, therefore, dismiss the appeal with costs of both hearings.

K. M. C.

Appeal dismissed.