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FARZAND ALI v. HANUMAN PRASAD.

We accordingly direct that the case be transferred from the court of the District Magistrate of Mirzapur to that of the District Magistrate of Allahabad.

APPELLATE CIVIL.

1896. *August* 21.

Before Mr. Justice Aikman.

SHAM LAL (DEFENDANT) *v.* CHOKHE (PLAINTIFF).*

Act No. XII of 1881 *(N.-W. P. Rent Act), section* 42*—Assessment of price of crops belonging to an evicted tenant—Effect of such assessment.*

Held that where a land-holder having ejected a tenant upon whose holding there are growing crops, applies under section 42, cl. (*c*) of Act No. XII of 1881 for assessment of the price, he is bound by the assessment which the Revenue Court may make and cannot afterwards refuse to pay the price fixed.

IN this case the plaintiff sued as the representative of a non-occupancy tenant who had been evicted from his holding under section 36 of the N.-W. P. Rent Act, 1881, to recover a sum of Rs. 236-11 with interest, alleged to be due by the zamíndár on account of crops standing on the land at the time of his father's eviction, which had been taken at a valuation under the provisions of section 42 of the Act.

The zamíndár-defendant pleaded that he had never accepted the valuation and had appealed against it, and that he had never taken the crop.

The court of first instance (Deputy Collector of Shájahánpur) found that the zamíndár-defendant had never taken possession of the crop and had refused to accept the estimate of the price made by the Tahsíldár, and, holding that the plaintiff remained owner of the crop until the compensation was paid and possession delivered, dismissed the suit.

On appeal by the plaintiff the lower appellate court (District Judge of Shájahánpur) decreed the appeal and the plaintiff's suit, holding that when once the landlord had applied under section 42 for an estimate he was bound by it and had no option of refusal.

* Second Appeal No. 1019 of 1894 from a decree of H. B. Finlay, Esq., District Judge of Sháhjahánpur, dated the 18th August 1894, reversing a decree of Syed Abdullah Khan, Deputy Collector of Sháhjahánpur, dated the 11th June 1894.

The defendant appealed to the High Court.

Munshi *Madho Prasad* for the appellant.

Mr. *W. K. Porter* for the respondent.

AIKMAN, J.—Narain, father of the plaintiff in the suit out of which this appeal has arisen, was a tenant of agricultural land, of which Sham Lal, the defendant in the suit, was the land-holder. The latter procured an order of the Revenue Court for the ejectment of Narain from his holding. At the time it was sought to enforce the ejectment order there were growing crops on the land. When this is the case section 42 of Act No. XII of 1881 gives the land-holder the option of allowing the tenant to continue to occupy the land, paying adequate rent therefor until the crops have been gathered in. If, however, the land-holder wishes to have immediate possession of the land, he must purchase the crops. If the land-holder desires to adopt the latter alternative, he tenders to the tenant the price of the crops, and clause (*b*) of section 42 declares that thereupon the right of the tenant to the crops and to use the land for gathering them in ceases, *i.e.*, the property in the crops passes at once to the land-holder. It is not necessary, in order that the property in the crops should pass, that the tenant should accept the price offered. The mere tender by the land-holder is sufficient to divest the tenant of all right to and ownership in the crops. It is not in my opinion necessary that the price tendered should be proved ultimately to be the full price in order that the right to the crop should pass. I consider that it is the intention of the Legislature that the tender of a price, even if inadequate, should suffice for that purpose. This, I hold, is the meaning of cl. (*b*), section 42; and the object is to prevent any uncertainty as to the ownership of the crops, which would in all probability result in the crops being damaged. If the land-holder and the tenant cannot agree as to the price, either of them is at liberty to apply to the Rent Court to make an award as to the price; and it is declared in cl. (*c*) of the section, that the amount of the award so made shall be recoverable as an arrear of rent by suit under the Act.

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In this case the land-holder desired to purchase the crops so as to obtain immediate possession of the land. He, I presume, tendered a price to the tenant which the latter thought to be insufficient, for the land-holder had recourse to the provisions of cl. (*c*) of section 42 and applied to the Assistant Collector to make an award as to the proper price. The matter was referred to arbitration, and in accordance with the decision of the arbitrators the Assistant Collector passed an order determining the price. The land-holder appealed to the Collector, who dismissed the appeal. The tenant's son has now sued to recover the price so awarded and has obtained a decree from the lower appellate Court. The defendant comes here in second appeal.

I am of opinion that the appeal must fail. The question for decision is whether a land-holder who has had recourse to the second alternative referred to above, and has expressed an intention of purchasing the crops, can alter his mind, if in his opinion the Rent Court to which a dispute about the price has been referred puts what he considers too high a value on the crop. I think the learned District Judge is perfectly right in holding that the land-holder cannot withdraw his offer to purchase. It is possible that the Rent Court may fix what is really too high a price for the crops, but this is a contingency which the land-holder must face when he chooses the second of the two alternatives.

The appellant relies on an expression of opinion by the Collector when dismissing the appeal in regard to the award. The Collector in his judgment in that case said that if the land-holder thought the price too high, he need not pay, but might let the tenant take away the crops. It is unfortunate for the appellant that the Collector committed himself to this expression of opinion, for in my view it is quite wrong and has misled the appellant.

As the Collector upheld the award, the tenant is by law entitled to recover it, and the decree of the District Judge was right.

The appeal fails and is dismissed with costs.

Appeal dismissed.