

1896

June 15.

*Before Mr. Justice Blair and Mr. Justice Burkitt.*TOTA RAM AND OTHERS (DEFENDANTS) *v.* LALA (PLAINTIFF).**Act No. IV of 1882 (Transfer of Property Act), section 135—Actionable claim—Sale of mortgagor's interest in mortgaged property.*

The sale by a mortgagor of his interest in the property mortgaged is not the sale of an actionable claim within the meaning of section 135 of the Transfer of Property Act, 1882.

THIS was a suit for redemption of a usufructuary mortgage. One Lala, the uncle of Diwan Singh, defendant, executed a usufructuary mortgage of certain property for Rs. 600 in favour of Man Singh, and put the mortgagee in possession. Man Singh sold his rights in the mortgaged property to Diwan Singh and four others, defendants, and gave the vendees possession. Lala, the mortgagor, died and was succeeded by Diwan Singh, his nephew. Diwan Singh sold his interest as a mortgagor to the plaintiff Lala. Lala, plaintiff, brought a suit for redemption, and paid the mortgage money (Rs. 600) into Court. The defendants, other than Diwan Singh, who, not impleaded at first, was added by the Court to the array of defendants, pleaded that out of a nominal sale consideration of Rs. 1,000 only Rs. 50 had in fact been paid, and they claimed the benefit of section 135 of the Transfer of Property Act, alleging that they were entitled to defeat the plaintiff's suit on payment of the actual price paid (stated by them to be Rs. 50) and the expenses of the sale. They pleaded also a right to take the property mortgaged as pre-emptors; that there was another mortgage on the property which the plaintiff was also bound to redeem, and that the sale in favour of the plaintiff was executed without consideration.

The Court of first instance (Munsif of Khurja) gave the plaintiff a decree for redemption and possession as prayed. The defendants appealed. The Additional District Judge confirmed the decree of the Munsif and dismissed the appeal. From that decree the defendants appeal to the High Court.

Second Appeal No. 445 of 1896 from a decree of T.C. Piggott, Esq., Additional District Judge of Aligarh, dated the 13th March 1896, confirming a decree of Pandit Soti Baghubans Lal, Munsif of Khurja, dated the 20th November, 1895

Pandit *Sundar Lal* (for whom *Babu Jivan Chandar Mukerji*) for the appellants.

Munshi *Ram Prasad*, for the respondent.

BLAIR and BURKITT, JJ.—This appeal, one ground only, the third, being urged upon us, is based on the contention that the purchase of the mortgagor's interest in land subject to a mortgage is a purchase of an actionable claim within the meaning of section 135 of the Transfer of Property Act. We are not prepared to accede to so novel a contention for, which no authority is produced. In our opinion, what was effected by the purchase was the transfer of the land itself subject to the mortgage. It seems to us a totally different thing from and bears in our mind no analogy whatever to the purchase of a mortgagee's interest in a mortgage after the mortgage has become due and payable. We dismiss the appeal with costs.

Appeal dismissed.

Before Mr. Justice Banerji.

YUSUF ALI KHAN AND OTHERS (PLAINTIFFS) v. HIRA AND OTHERS
(DEFENDANTS).*

Landholder and tenant—Act No. XII of 1881 (N. W. P. Rent Act), section 93 (b)—Suit to eject a tenant—Act inconsistent with the purpose for which the land was let—Sub-lease to a theatrical company.

An agricultural tenant, at a time when there were no crops growing on his holding, let part of it temporarily to a theatrical company for the purpose of their holding performances thereon. *Held*, that this was not an act sufficient to cause a forfeiture of the tenancy within the meaning of section 93, clause (b) of Act No. XII of 1881.

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

Kunwar *Parmanand*, for the appellants.

The respondents were not represented.

BANERJI, J.—This was a suit brought under clause (b) of section 93 of the Rent Act (No. XII of 1881) to eject an occupancy

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Second Appeal No. 473 of 1897 from a decree of C. Rustamji, Esq., District Judge of Moradabad, dated the 25th March 1897, confirming a decree of A. W. McNair, Esq., Assistant Collector of Moradabad, dated the 13th November 1897.