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at all for a commutation of the rent in kind into a fixed money rent, but a Court of Revenue had erroneously made a decree for a money rent and that decree was executed and was not reversed in appeal or superseded by a Court competent to reverse it, a tenant whose goods had been sold in execution of such decree for rent or who had satisfied that decree by payment, could not recover so long as the decree for rent was not reversed or superseded by a Court competent in that respect. The defendants had a remedy against this decree for rent, and that was by appealing. Of that remedy they did not avail themselves, and it may be observed that, as the Assistant Collector apparently acted without jurisdiction in making his order of commutation, the defendants had a good ground of appeal. The fact that the order of the Board of Revenue in revision set aside the order of the Assistant Collector commuting the rent cannot, in our opinion, put the plaintiffs in a better position than they would have been in, if, as we think is probable, the Assistant Collector had no jurisdiction to make the order of commutation. In our opinion, as the decree of the Court of Revenue stands unreversed and not superseded by a competent Court, this suit must fail. We allow this appeal with costs in this Court and in the Court below, and, setting aside the order under appeal we dismiss the appeal to the Court of first appeal and restore and affirm the decree of the first Court.

Appeal decreed.

Before Mr. Justice Aikman.

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January 19.

DAULAT RAM (DEFENDANT) *v.* ANWAR HUSEN (PLAINTIFF).*

Jurisdiction—Civil and Revenue Courts—Suit to set aside, on the ground of duress, an agreement by an ex-zamindar for surrender of his sir land.

On the sale of a village the vendor covenanted with the vendee to hold his *sir* land as a tenant of the vendee for a certain term and then to surrender it to the vendee. *Held* that there was nothing to preclude the vendee from suing in a Civil Court for a declaration that the said agreement was void and

* Second Appeal No. 969 of 1896, from a decree of T. E. Piggott, Esq., Additional Judge of Aligarh, dated the 5th September 1896, modifying a decree of Munshi Achal Behari, Munsif of Etah, dated the 13th December 1895.

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unenforceable and had been extorted from him by undue influence. *Mahesh Rai* v. *Chandar Rai* (1), *Ajudhia Rai* v. *Parmeshar Rai* (2) and *Husain Shah* v. *Gopal Rai* (3) referred to.

THE facts of this case are fully stated in the judgment of the Court.

Mr. *W. Wallach* and Munshi *Badri Das*, for the appellant.

Maulvi *Ghulam Mujtaba*, for the respondent.

AIKMAN, J.—On the 18th January 1893, the appellant Daulat Ram purchased from the respondent Anwar Husen his proprietary rights in a certain village. On the following day Anwar Husen executed in favour of Daulat Ram a kabuliat by which he undertook to hold his *sir* land as a tenant of Daulat Ram, for a term of three years, at a rental of Rs. 175, and then surrender it. It is found that the rental entered in the kabuliat is far in excess of the rate Anwar Husen would have been bound to pay under the provisions of section 7 of the North-Western Provinces Rent Act. The object of the agreement on the face of it was clearly to defeat the provisions of that section, and the agreement was therefore, under the provisions of section 23 of the Indian Contract Act, unlawful and void. In the following year Daulat Ram sued Anwar Husen to recover rent at the rate agreed upon. The suit was dismissed by the Assistant Collector, but on appeal was decreed by the then District Judge of Mainpuri. I must express my surprise that the District Judge should have given effect to an agreement, the object of which was so clearly unlawful. To the suit for the arrears of rent the defendant Anwar Husen pleaded—"that the kabuliat was unenforceable, as having been extorted from him by undue influence for an exorbitant rent." In his judgment the District Judge said:—"I think that the question as to whether it (that is, the kabuliat) was executed under pressure of undue influence cannot be properly decided in the present suit. If the respondent wishes to have it set aside he can sue in the Civil Court." On the 19th of September 1895, Anwar Husen instituted the suit out of which this appeal arises.

(1) I. L. R., 13 All., 17. (2) I. L. R., 18 All., 340.
(3) I. L. R., 2 All., 428.

He asks for two reliefs, first; that the kabuliat and the decree passed by the Revenue Court on the basis of the said kabuliat might be cancelled and held unenforceable; secondly, that a sum of Rs. 418-10-0, being a balance alleged to be due out of the price of his zamíndári estate, should be awarded to him. The Court of first instance, the Munsif of Etah, gave the plaintiff a decree for Rs. 100 under the second relief set forth above and dismissed the rest of the claim. On appeal, the District Judge gave the plaintiff a decree cancelling the kabuliat and declaring it inoperative. *Quoad ultra* the decision of the Munsif was affirmed. The defendant Daulat Ram comes here in second appeal and impugns the decree of the lower appellate Court on two grounds. First, that the claim for the cancellation of the kabuliat was barred by section 13 of the Code of Civil Procedure, and secondly, that the claim for the cancellation of the kabuliat was not cognizable by the Civil Court. The appellant's case has been ably argued by the learned counsel who appears in support of the appeal, but after full consideration I have come to the conclusion that the appeal must fail.

The lower Court has decreed the cancellation of the kabuliat on several grounds, one being that it was extorted from the plaintiff by undue influence. With reference to the extract from the previous judgment which has been set forth above, I cannot hold that the issue as to whether the kabuliat was obtained through undue influence was heard and finally decided in the previous suit.

In support of the second ground of appeal the learned counsel relies on two Full Bench decisions of this Court, *i.e.*, *Mahesh Rai* v. *Chandar Rai* (1) and *Ajudhia Rai* v. *Parmeshar Rai* (2). For the respondent reliance is placed on a decision of this Court in *Husain Shah* v. *Gopal Rai* (3). If the cases relied on by the learned counsel for the appellant are in point I am of course bound to follow them and sustain the appellant's contention, but I think the cases are distinguishable from the

(1) I. L. R., 13 All., 17. (2) I. L. R., 18 All., 340.
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present case. In the first case a Revenue Court had held that the defendants were occupancy tenants; the plaintiffs brought a suit in a Civil Court asking for a declaration that the judgment of the Revenue Court in so far as it was injurious to the plaintiff's rights might be declared as set aside and of no effect, and that it should be decided that the defendant's possession was that of sub-tenants. This was clearly a suit of which the cognizance was barred by section 95, clause *(a)* of the North-Western Provinces Rent Act. In the second Full Bench case, the Settlement Court had entered the defendants as tenants at fixed rates and the plaintiffs as mortgagees of the holding. The plaintiffs asked for a decree for maintenance of possession "by invalidating the proceeding of filling up the columns at the recent settlement." It was held that if a Civil Court exercised jurisdiction in the case by declaring that the plaintiffs were and the defendants were not the tenants at fixed rates of the holding in question, it would be exercising a jurisdiction which section 241 of Act No. XIX of 1873 prohibits the Civil Courts from exercising.

In this case it may be true that the ultimate result of the decree which the plaintiff obtained will be that he may, by adopting proper steps, succeed in establishing his status as an ex-proprietary tenant, but the decree as given does not, in my opinion, trench upon the jurisdiction of the Revenue Courts. Suppose that a landholder by duress obliges his tenant to execute a kabuliat for the land which he holds, undertaking to pay an exorbitant rent, the tenant might, it appears to me, wait until he is sued upon the kabuliat and put forward the defence that it had been extorted from him, and in that case it would be incumbent on the Revenue Court to find whether or not the defendant's plea was good. But in my opinion the tenant would not be bound to wait until he was made defendant in a suit for arrears. He might, I hold, bring a suit to have it declared that the kabuliat was not binding upon him. If he could bring such a suit, there is no provision, so far as I can see, in the Rent Act by which a Revenue Court could

entertain it; it would necessarily lie, therefore, in the Civil Court. In this case the tenant has executed a kabuliat by which he undertook to surrender the holding after a certain period. It is stated that the landholder has not as yet taken any steps to enforce the agreement to surrender. I am unable to see what there is to prevent the tenant from maintaining the present suit to have it declared that the agreement is not binding upon him. With reference to the fact that, as I read it, the District Judge in his judgment of the 7th of November 1894, refrained from deciding the question as to whether the agreement to pay an enhanced rent had or had not been obtained under pressure of undue influence, there is, in my opinion, no bar to the tenant maintaining this suit for the cancellation of the kabuliat as a whole. In the case relied upon by the respondent it was held that a suit to set aside a perpetual lease of agricultural land on the ground that the word importing perpetuity had been fraudulently inserted in this lease was "peculiarly within the jurisdiction of the Civil Court." I see no reason why this view should not be extended to a suit to set aside a kabuliat on the ground that it had been obtained by undue influence. For the above reasons I dismiss this appeal with costs.

Appeal dismissed.

Before Sir John Edge, Kt., Chief Justice and Mr. Justice Burkitt.

1898 *January* 25.

ABDUL MAJID KHAN (DEFENDANT) v. KADRI BEGAM (PLAINTIFF).*

Construction of document—Award—Award of the nature of a family settlement directing an annuity to be paid "ta haiyât walidain."

An award drawn by an unprofessional arbitrator in India is not to be construed according to the same principles as an award settled by counsel or a solicitor in England, but in accordance with what may reasonably be supposed under the circumstances of the case to have been the intentions of the arbitrator.

Where an award, which was of the nature of a family settlement between a father, mother and son, of certain property which had been given by the father to the mother in lieu of dower and then by the mother to the son, directed that a certain annuity should be paid out of the property to the father

* Appeal No. 27 of 1897, under section 10 of the Letters Patent.