

This disposes of the only two matters which have been discussed in this appeal. For the foregoing reasons the appeal fails and is dismissed with costs.

An objection has been filed by the respondent under section 561 of the Code of Civil Procedure. The objection is that interest was not allowed to the plaintiff *pendente lite* or after the date of the decree. The allowance of interest in a case of this kind is a matter in the discretion of the Court and we are not prepared to say that the Court below has improperly exercised its discretion in the matter. We disallow the objection therefore, but without costs.

Appeal dismissed.

1906

YAKUB
ALI
KHAN
v.
KISHAN
LAL.

Before Mr Justice Banerji.

BAGHCHI *alias* BACHCHIA (DEFENDANT) *v.* BACHCHI (PLAINTIFF).^{*}
Act (Local) No. II of 1901 (Agra Tenancy Act), sections 8, 20 and 22—Fixed rate tenant—Transfer—Succession—Claim of sister to inherit.

1906
May 30.

A transferee from a zamindar under a deed which purports to confer all the rights of a tenant at fixed rates, acquires only the rights of an occupancy tenant, and not those of a fixed rate tenant as defined in section 8 of the Tenancy Act.

The fixed rate tenant referred to in section 20 of the Tenancy Act is a tenant described in section 8 of that Act, and not a tenant who, under a contract with the zamindar, holds at a fixed rate of rent.

The interest of such transferee cannot, under section 22 of the Tenancy Act, devolve upon his sister.

THE facts of this case are as follows:—

By a deed dated the 15th of December, 1899, one Muhammad Bakhsh, as zamindar, transferred to Bahadur Ali a holding, 17 bighas 6 biswas and 10 dhurs in extent, known as the holding of Rang Lal. The deed provided that the rent of the land should not be enhanced and that the transferee should have all the rights of a tenant at fixed rates. On the death of Bahadur Ali in 1903 his sister Musammat Bachchi brought a suit for a share in the property left by the deceased, including the aforesaid holding of Rang Lal. In regard to this holding the claim was resisted upon the ground that, under section 22 of the Agra

^{*} Second Appeal No. 999 of 1904, from a decree of Lala Baijnath Rai Bahadur, District Judge of Jaunpur, dated the 15th of June 1904, modifying the decree of Maulvi Shams-ud-din Khan, Munsif of Jaunpur, dated the 19th March, 1904.

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Tenancy Act, the plaintiff was not entitled to a share in it. The Court of first instance (Munsif of Jaunpur) decreed the plaintiff's claim and the lower appellate Court (District Judge of Jaunpur) confirmed the decree of the first Court. The defendant, widow of Bahadur Ali, appealed to the High Court, raising the same objections which had been taken in the Courts below as to the right of inheritance of the plaintiff, Bahadur Ali's sister.

Maulvi *Rahmat-ullah* (for Maulvi *Ghulam Muftaba*), for the appellant.

Babu *Sarat Chandra Chaudhri* (for Dr. *Satish Chandra Banerji*), for the respondent.

BANERJI, J.—The plaintiff respondent, who is the sister of one Bahadur Ali, claimed a share in his property by right of inheritance. The defendant appellant is the widow of Bahadur Ali. Among the property claimed is a holding, 17 bighas 6 biswas and 10 dhurs in extent, known as the holding of Rang Lal. It is this holding to which alone the present appeal relates. The claim in regard to this holding was resisted on the ground that, under section 22 of the Agra Tenancy Act, the plaintiff was not entitled to inherit a share in it. The Courts below have disallowed this objection and have decreed the claim. It is alleged that this holding is that of a fixed rate tenant and is heritable in the ordinary way. It appears that the land in question was transferred to Bahadur Ali by a deed, dated 15th December, 1899, (registered on the 16th of that month), executed by Muhammad Bakhsh, the zamindar, and the deed provides that the rent of the land should not be enhanced and that Bahadur Ali is to have all the rights of a tenant at fixed rates. A fixed rate tenant is a tenant of the description mentioned in section 8 of the Tenancy Act, that is, a person by whom land in a district or portion of a district which is permanently settled has been held from the time of the permanent settlement at the same rate of rent. It is clear that the zamindar, by executing a deed in favour of the tenant, could not make him a fixed rate tenant within the meaning of section 8. He might confer on him the right to occupy the land at a fixed rate of rent, but that would only make him an occupancy tenant and not a fixed rate tenant within the meaning of the Act. A tenant at fixed rates, referred to in

section 20, is a tenant described in section 8 and not a tenant who under a contract with the zamindar holds at a fixed rate of rent. Therefore section 20 has no application to the tenancy in question, and the devolution of such a tenancy after the death of the tenant, must be in accordance with the provisions of section 22. In the list of heirs mentioned in that section the sister finds no place. Therefore the plaintiff has no right to the property which is in controversy in this appeal, and that property passed to the appellant, the widow of the deceased, there being no lineal descendants in the main line of descent. I may also observe that in the plaint the 17 bighas 6 biswas 10 dhurs of land in question are described as an occupancy holding. The Court below was therefore wrong in decreeing the claim in regard to this property and this appeal must prevail. I accordingly allow the appeal with costs, and, varying the decree of the Courts below, dismiss the plaintiff's claim in respect of the 17 bighas 6 biswas 10 dhurs of land known as the holding of Rang Lal, with proportionate costs in this Court and in the Courts below.

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Appeal decreed.

Before Sir John Stanley, Knight, Chief Justice, Mr. Justice Sir George Knox, and Mr. Justice Aikman.

1906
June 7.

SITA RAM SINGH (DEFENDANT). v. POKHPAL SINGH AND ANOTHER
(PLAINTIFFS).*

Suit for profits—Previous suit dismissed because one of the defendants not summoned—Civil Procedure Code, section 99A.

A suit for profits for the years 1301, 1302 and 1303 Fasli, brought by the present plaintiffs against the appellant and two other defendants, was dismissed owing to the plaintiffs' failure to cause one of the defendants to be summoned. The plaintiffs now sued the same three defendants for profits for the years 1302, 1303 and 1304 Fasli.

Held, that it was open to the plaintiffs, subject to the law of limitation, to bring the present suit and that the case was governed by the principle embodied in section 99A of the Code of Civil Procedure.

THIS was a suit for profits for the years 1302, 1303 and 1304 Fasli. There were three defendants to the suit, namely, Sita

* Second Appeal No. 785 of 1904, from a decree of J. H. Cuming, Esq., Additional District Judge of Aligarh, dated the 10th of May 1904, confirming the decree of Mr. Babu Dip Chand Rathore, Assistant Collector of Bulandshahr, dated the 25th of September, 1903.