

1906

GENDA  
KUNWAR  
v.  
PIARI LAL.

allowed. *Quoad ultra* it is dismissed. The parties will pay and receive costs here and in the Courts below in proportion to their failure and success.

*Decree modified.*

1906

May 28.

*Before Mr. Justice Richards.*

MADAN LAL (DEFENDANT) v. MUHAMMAD ALI NASIR KHAN  
(PLAINTIFF).\*

*Act II of 1901 (Local), Agra Tenancy Act, section 20—Statute 24 and 25 Vict., Cap. CLIV—Occupancy holding—Sale in execution of Civil Court Decree—Subsequent relinquishment of holding by tenant in favour of landlord.*

A wife in execution of a decree for maintenance got the occupancy holding of her husband sold, purchased it herself, and afterwards sold it to the defendant. Subsequently the husband relinquished the holding to the plaintiff, his landlord.

*Held* that the fact that the relinquishment by the husband may have been intended to defeat the defendant's claim did not prevent the defendant's claim being absolutely barred by the provisions of section 20 of the (Agra Tenancy Act), 1901. *Jagoe v. Harrington* (1), *Donoughmore v. Forest* (2), *Gilman v. Murphy*, (3) referred to.

THE facts appear sufficiently from the judgment of the Court. The appeal was heard under the provisions of section 551 of the Code of Civil Procedure.

RICHARDS, J.—This is a suit to recover possession of a grove. The lower Court decreed the plaintiff's claim. The plot formed part of the occupancy holding of one Surju. Surju's wife obtained a decree against Surju for maintenance. In execution of this decree she sold and purchased herself the plot now in dispute. She got formal possession on 7th February, 1903, and on 31st March, 1903, she sold to the defendant, Madan Lal. Surju then relinquished his holding to the plaintiff his landlord. Madan Lal now defends his suit upon the strength of the sale-deed made in his favour by Musammatt Mahadei, the wife of Surju.

I am quite satisfied that the property in dispute was part of the occupancy holding of Surju. Section 20 of Act II of 1901

Second Appeal No. 119 of 1906, from a decree of W. Tndball, Esq., District Judge of Gorakhpur, dated the 16th of November, 1905.

(1) 10 L. R., Ireland, 335, (2) Ir. Rep., 5 Com. L., 443 (Exch. C.).

(3) Ir. Rep., 6 Com. L., 34.

expressly provides that the interest of an occupancy tenant shall not be transferable in execution of the decree of a Civil Court. It is as clear as can be that the policy of the law is that these occupancy holdings shall not be dealt with contrary to the provisions of the Act. To do so is illegal. I am quite satisfied that the purchase by Musammat Mahadei and the sale by her to the defendant was merely an attempt to get over the clear provisions of the Act. I should be very sorry if I found it necessary to arrive at a decision different from that of the learned District Judge. It is in my opinion of the utmost importance that these holdings should not be subject to prolonged litigation arising out of all kinds of complicated dealings. It is argued that Surju had no right to relinquish his holding so as to defeat the defendant's claim. In my judgment neither Surju's wife nor the defendant acquired any right to the land. The Act renders it illegal to sell an occupancy holding in execution of a decree. The Statute 24 and 25 Vict., Cap. CLIV prohibited, in language not a bit stronger, certain assignments and sub-lettings by tenants of land in Ireland. It was held that assignments and sub-lettings contrary to the provisions of this Statute were absolutely void and a tenant after assigning or sub-letting was permitted to repudiate his own deed and eject his own sub-lessee. See *Jago v. Harrington* (1), *Donoughmore v. Forest* (2), *Gilman v. Murphy* (3). The learned Judge in a clear and able judgment has dealt with every matter which in my opinion required to be dealt with. I entirely concur in his judgment and dismiss the appeal.

1906

---

MADAN LAL  
v.  
MUHAMMAD  
ALI NASTIR  
KHAN.

*Appeal dismissed.*

(1) 10 L. Rep., Ireland, 335.

(2) Ir. Rep., 5 Com. L., 443 (Exch. C.).

(3) Ir. Rep., 6 Com. L., 34.