

1906
April 10.

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

TARA SINGH (DEFENDANT) v. KHUSHHAL KUNWAR (PLAINTIFF).^{*}
*Act (Local) No. II of 1901 (Agra Tenancy Act), sections 56, 57(a) and (c)
and 80—Landholder and tenant—Ejectment—Construction of document—
Lease—Condition inconsistent with the provisions of the Tenancy Act.*

The plaintiff leased a village to the defendant. The defendant executed a *qabuliat* containing, amongst other provisions, a covenant for payment of the rent, amounting to Rs. 7,050, half in the month of Kartik and half in the month of Baisakh, as also, in the event of the revenue of the village being enhanced, enhanced rent to the extent of the increase in the revenue. The lessee also covenanted to plant 10 bighas *kham* per plough with indigo and to transmit the indigo to the plaintiff every year and also to render in kind other produce. The *qabuliat* further contained a provision that the lessee should not allow any tenant to acquire occupancy rights, and that on failure to observe this provision he should pay to the lessor Rs. 50 per plough as enhanced rent during the term of the lease. There was a further provision that if the lessee failed to comply with the conditions of the lease, the plaintiff should have the power to dispossess him during the term of the lease. On failure of the lessee to observe the conditions above set forth the lessor sued for and obtained a decree for his ejectment. *Held* that the condition of forfeiture for non-payment of rent was inconsistent with the provisions of the Agra Tenancy Act, 1901, and the plaintiff was not entitled to maintain his suit for ejectment. But, inasmuch as the lease would expire by effluxion of time within a year from the date of the High Court's judgment, the lessee was not under section 80 of the Act entitled to be restored to possession.

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

Messrs. B. E. O'Connor and G. W. Dillon, for the appellant.

The Hon'ble Pandit Sundar Lal and Babu Durga Charan Banerji, for the respondent.

STANLEY, C.J.—This is an appeal against a decree in a suit for ejectment brought under section 57 of Act No. II of 1901. The plaintiff, who is the *zamindar* of 20 biswas of land in *mauza* Sangra, in the district of Aligarh, gave a lease to the defendant of this land on the 5th of June 1899. The defendant executed a *qabuliat* containing a number of provisions, and, amongst others, a covenant for payment of the rent, amounting to Rs. 7,050, half in the month of Kartik and half in the month

^{*}First Appeal No. 90 of 1904, from a decree of Shaikh Muhammad Habib-ullah, Esq., Assistant Collector, 1st class, of Aligarh, dated the 16th of February, 1904.

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of Baisakh, as also, in the event of the revenue of the village being enhanced, enhanced rent to the extent of the increase in the revenue. He also agreed to plant 12 bighas *kham* of land per plough with indigo, and to transmit the indigo to the plaintiff every year and also to render in kind other produce. The *qabuliat* further contained the provision that the lessee should not allow any tenant to acquire occupancy rights, and that on failure to observe this provision he should pay to the lessor Rs. 50 per plough as enhanced rent during the term of the lease. There was a further provision, that if the lessee failed to comply with the conditions of the lease, the plaintiff should have the power to dispossess him during the term of the lease. The defendant appellant did not punctually pay the rent. He also failed to plant indigo in accordance with the terms of the lease and to pay to the plaintiff the *sawai* items therein mentioned. He also allowed some tenants to acquire occupancy rights. In consequence of the breach of these conditions of the lease the suit was instituted.

The Assistant Collector held that the defendant had broken the conditions of the lease and was liable to ejection under section 57(c) of the Tenancy Act. Against his decision this appeal has been preferred.

The contention of Mr. O'Connor on behalf of the appellant is, as regards the breach of the covenant for payment of rent punctually, that the condition of the lease in this respect is inconsistent with the provisions of the Tenancy Act, and that the defendant appellant is not liable to ejection for the breach of that condition. He relies upon section 57(a) as showing that a tenant is not liable to ejection for non-payment of rent unless a decree has been obtained against him for arrears of rent in respect of his holding on account of an agricultural year and such arrears remained unsatisfied at the expiry of that year. Section 56 provides that no tenant shall be ejected otherwise than in accordance with the provisions of the Act. I am of opinion that the condition of forfeiture for non-payment of rent is consistent with the provisions of the Act and that the plaintiff was not entitled to maintain his suit for ejection for non-payment of rent. Rent is defined in the Act [section 4, sub-section (3)] to mean whatever is in cash or kind to be paid or delivered

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by a tenant for land held by him, &c., and therefore the breach of covenant in respect of the delivery of the produce referred to in the plaint will not cause forfeiture.

I next come to the condition that the lessee should not allow any tenant in future to acquire occupancy rights. Part of the plaintiff's complaint is that the defendant broke this condition, and is therefore liable to ejection. There is, however, a provision in the *qabuliat* providing for compensation for the breach of this condition. The compensation on breach is that the lessee shall pay to the lessor Rs. 50 per plough as enhanced rent during the term of the lease. In view of this provision it appears to me that the breach of the condition in question does not involve a forfeiture of the lease. The parties have themselves provided the penalty for the breach by an enhancement of the rent. It therefore appears to me that the decision of the Court below was wrong and that a decree in ejection ought not to have been passed against the appellant. It has been pointed out to us that the lease will expire by effluxion of time in the present year, and that therefore the provisions of section 80 of the Tenancy Act are applicable. That section provides that when a Court of appeal or revision reverses a decree or order for the ejection of a tenant and the tenant would not have been entitled to remain in possession after the expiry of the agricultural year in which the decree or order of the Court of appeal or revision is given, the decree or order shall not lie for recovery of possession, but for costs only. We can only therefore award costs to the appellant if we consider him entitled to costs. But in view of his conduct in neglecting to observe the conditions of the lease, I would direct that the parties respectively abide their own costs of this appeal as also their costs in the Court below.

KNOX, J.—I agree with the judgment of the learned Chief Justice and have no further observation to add.

BY THE COURT.—The order of the Court is that while the ejection decree ought not to have been passed, under the circumstances, we cannot and do not give a decree for possession to the appellant. We make no order as to costs.

Appeal decreed.