

1906

MUHAMMAD
JAN
v.
SADANAND
PANDE.

1906
January 30.

on the merits. The plaintiffs will have the costs of this appeal in any event. All other costs will abide the event.

Appeal decreed and cause remanded.

Before Mr. Justice Sir George Know and Mr. Justice Aikman.

NETRAPAL SINGH (PLAINTIFF) v. KALYAN DAS AND OTHERS
(DEFENDANTS).*

*Act No. IV of 1882 [Transfer of Property Act], sections 10, 110(g)—
Perpetual lease—Covenant against alienation without covenant for re-entry
—Construction of document.*

Where a perpetual lease of a village to the lessee and his heirs contained a covenant against alienation by the lessee, but no covenant giving to the lessor a right of re-entry upon breach of the former covenant, it was held that the successors in title of the lessor could not recover the property the subject of the lease from the alienees of the successors in title of the lessee. *Nil Madhab Sikdar v. Narattam Sikdar* (1) and *Parameshri v. Viltappa Shanbaga* (2) followed.

THE facts of this case are as follows:—

In the year 1848, Tikam Singh made a perpetual lease of mauza Chalasni, one of the villages of the Amargarh taluka, in favour of his brother Sheo Baran Singh on an annual rent of Rs. 900. The lease contained the following stipulation:—"Sheo Baran Singh himself or his heirs shall not be competent to make a transfer by means of sale or mortgage, &c., to anyone, and Sheo Baran Singh shall be responsible therefor." Nur Singh and Balwant Singh, the sons of Sheo Baran Singh, having alienated the property the subject of the abovementioned lease, Netrapal Singh, the successor in title of the lessor, sued the alienees and the representatives of the lessee to recover possession of the village Chalasni. The lease was put in evidence; but it was found to be torn, the latter portion being missing. The plaintiff tendered evidence to show that this missing portion contained a covenant giving the lessor a right of re-entry in the event of a breach of the covenant against alienation. The Court of first instance (Additional Subordinate Judge of Aligarh) dismissed the suit, chiefly upon the ground that it was barred by limitation. The plaintiff appealed to the High Court.

* First Appeal No. 48 of 1904, from a decree of Maulvi Maulah Bakhsh Additional Subordinate Judge of Aligarh, dated the 7th of November, 1903.

(1) (1899) I. L. R., 17 Cal., 526. (2) (1902) I. L. R., 20 Mad, 157.

Babu *Jogindro Nath Chaudhri* and Babu *Satya Chandra Mukerji*, for the appellant.

Hon'ble Pandit *Sundar Lal*, Pandit *Moti Lal Nehru* and Babu *Durga Charan Banerji*, for the respondents.

KNOX and AIKMAN, JJ.—The suit out of which this appeal has arisen was brought by the appellant with the object of recovering possession of Nagla Chalasni, a hamlet in taluka Amargarh. The property was in 1848 granted in perpetual lease by the predecessor of the present appellant to a younger brother of his, by name Sheo Baran Singh, to be held in perpetuity by him and his heirs on payment of an annual sum of Rs. 900. The lease contains a covenant against alienation by sale or mortgage. It is an old document and towards the end of it a portion is wanting. The plaintiff's case was, and is, that this portion which is non-existent contained a further stipulation that, in the event of a transfer, the lease would be forfeited and the lessor would have a right of re-entry. The plaintiff came into Court on the allegation that there had been a breach of the stipulations contained in the lease, and he sued both the representatives of Sheo Baran Singh and certain transferees for possession. The suit has been dismissed by the Subordinate Judge, and the plaintiff comes here in appeal raising again the contentions which he put forward in the Court below. The oral evidence called to prove that the lease contained a proviso for re-entry by the lessor on breach of the covenant against alienation is, in our opinion, worthless. We have inspected the original lease and we are of opinion that it is in the highest degree improbable that it contained any such provision. The learned vakil for the appellant admits that if the lease had no such provision, the case relied on by the learned Subordinate Judge, viz. *Nil Madhab Sikdar v. Narattam Sikdar* (1) is against him. There is a later case, viz. *Parameshri v. Vittappa Shanbaga* (2) in which all the authorities are reviewed, and which also is clearly against the appellant. In the absence of any provision for re-entry the appellant is not entitled to the possession of the property in suit. We dismiss the appeal with costs.

Appeal dismissed.

(1) (1890) I. L. R., 17 Cal., 826.

(2) (1902) I. L. R., 26 Mad., 157.