

this Court in *Kalyani Prasad v. Bishnath* (1). We therefore allow the appeal. We set aside the decrees of both the lower Courts, and we remand the suit through the lower appellate Court to the Court of first instance with directions that it be reinstated on the file of pending suits in its original number and be disposed of on the merits. Costs here and hitherto will abide the event.

Appeal decreed and Cause remanded.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Karamat Husain.

RAM ANANT SINGH AND ANOTHER (PLAINTIFFS) v. SHANKAR SINGH
(DEFENDANT).*

Landlord and tenant—Concurrent leases—Landlord entitled to recover rent only as against second lessee.

Held that where a lessor executes two concurrent leases of the same property, that is to say, two leases in which the term of the second commences before the term of the first has expired, the second lessee is to be taken as the assignee of the lessor's interest during the concurrent portion of the terms, and the lessor after the execution of the second lease can recover rent only from the second and not from the first lessee. *Harner v. Bean* (2) followed.

THE plaintiffs in this case were owners of a share in a village called Chingauri in the Mirzapur district. On the 16th of June 1900, they executed a lease of this property in favour of one Raghunath Singh for a term extending from 1308 to 1314 Fasli at an annual rent of Rs. 395. Subsequently, namely, on the 12th of April 1904, the plaintiffs executed another lease of the same property at the same rent, but extending from 1312 to 1320 Fasli, in favour of one Shankar Singh. Under this lease Shankar Singh was authorized to realize the rent from the first lessee Raghunath Singh. Shankar Singh failed to pay the rent due from him for 1312-1313 Fasli and the lessors accordingly sued for its recovery. The Court of first instance (Assistant Collector) gave the plaintiffs a decree. On appeal, however, the District Judge reversed this decree and dismissed the plaintiffs' suits. The plaintiffs thereupon appealed to the High Court.

*Second Appeal No. 556 of 1907, from a decree of Syed Muhammad Ali, District Judge of Mirzapur, dated the 5th of February 1907, reversing a decree of Kunwar Jagdish Prasad, Assistant Collector 1st class of Mirzapur, dated the 17th of November 1906.

(1) Weekly Notes, 1905, p. 266.

(2) (1853) 3 C. and K., 307.

1908

RAM ANANT
SINGH
v.
SHANKAR
SINGH.

Babu *Durga Charan Banerji* and Munshi *Haribans Sahai*,
for the appellants.

Munshi *Gokul Prasad*, for the respondents.

STANLEY, C. J., and KARAMAT HUSAIN, J.—The facts of this case are these. The plaintiffs are the owners of a share of a village called Chingauri in the district of Mirzapur. On the 16th of June, 1900, they executed a lease of this property in favour of the defendant Raghunath Singh for a term extending from 1306 to 1314 Fasli at an annual rent of Rs. 395. Subsequently, on the 12th of April, 1904, the plaintiffs executed another lease of the same property in favour of the defendant Shankar Singh for a term extending from 1312 to 1320 Fasli at the same rent, namely, Rs. 395. Under this lease Shankar Singh was authorized to realise the rent from the defendant Raghunath Singh. This was what is known as a concurrent lease. Shankar Singh failed to pay the rent for the years 1312—1313 Fasli; and hence the suit was brought out of which this appeal has arisen. The Court of first instance decreed the plaintiffs' claim, but upon appeal the learned District Judge reversed the decision of the Court below and dismissed the plaintiffs' suit on the ground that as long as the lease of 1900 subsists the plaintiffs have no right to maintain a suit for rent against Shankar Singh. He says in his judgment:—"As Raghunath Singh's lease was not cancelled, and as he was not ejected, he remained in possession as thekadar in 1312 and 1313 Fasli, and Shankar Singh was not in possession in those years. I therefore do not see how Shankar Singh can be held responsible for the rent for 1312 and 1313 Fasli." In this view the learned District Judge was in error. The lease of 1904 operated as an assignment of the landlord's interest during the term of the earlier lease of 1900, and thereafter as a lease for the residue of the term granted by it. As assignee of the landlord Shankar Singh was entitled to collect the rent from Raghunath Singh. In the Law of Landlord and Tenant by Mr. Woodfall we find the law thus stated:—"A concurrent lease is one granted for a term which is to commence before the expiration or other determination of a previous lease of the same premises to another person. If under seal, it operates as an assignment of part of the reversion during the continuance of such previous lease, and from henceforth as a lease in possession during

the residue of the term therein expressed to be granted. It entitles the lessee as assignee of part of the reversion to the rent reserved in the previous lease and to the benefit of the covenants therein contained which are to be respectively paid and performed during the then residue of the term granted by the first lease and the continuance of the concurrent lease" (17th Ed., 235). In support of this statement the learned author quotes the decision of a very eminent English Judge, Baron Parke. In the case of *Harmer v. Bean* (1) the learned Baron held under very similar circumstances that the operation of a concurrent lease of the kind was to transfer part of the reversion of the landlord to the lessee, and that the landlord after the execution of such concurrent lease could not recover as against the first lessee any rent due after the execution of the concurrent lease. The facts in that case were these: the defendant rented a house from the plaintiff at a rent of £20 quarterly; afterwards the lessor granted a lease by deed to a third party of the house in question and other property for 21 years. It was held that the landlord could not recover the rent due under the first lease after the execution of the second lease. For these reasons we think the learned District Judge was in error, and we therefore, allowing this appeal, set aside his decree and restore the decree of the Court of first instance with costs in all Courts.

1908

 RAM ANANT
 SINGH
 v.
 SHANKAR
 SINGH.

Appeal decreed.

(1) (1853) 3 C. and K., 307.