1907
December 14.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir William Burkitt.

NAND KISHORE (PLAINTIFF) *v.* ANWAR HUSAIN AND OTHERS (DEFENDANTS).*

Lease—Condition for payment of rent in advance—Suit by purchaser of demised property for rent—Registration—Notice.

Certain property was leased for a term of 10 years, the lease containing a provision to the effect that if at any time during the currency of the lease the lessor should demand any portion of the rent in advance from the lessee, the latter should be bound to pay it on obtaining a receipt. Subsequently to the execution of this lease the demised property was sold by auction in execution of a decree. The auction purchaser sued the lessee for rent, but was met by the plea that the rent claimed had been paid to the lessor in advance under the terms of the lease. The lease was registered and it was found that the auction purchaser had not made inquiry of either the lessor or the lessee as to whether or not any rent had been paid in advance according to the terms of the lease. *Held* that under these circumstances the plaintiff was not entitled to recover.

THE facts of this case are as follows:—One Sajjad Husain was the owner of certain property at or prior to the year 1898. On the 21st of September of that year he granted a lease to the defendant of portion of this property for a term of 10 years, that is, from 1306 to 1315 Fasli (inclusive). The lease contained a provision to the effect that if at any time during the currency of the lease the lessor should demand any portion of the rent in advance from the lessee, the latter would be bound to pay it on obtaining a receipt. The lease was registered. On the 25th of December 1902 a sum of Rs. 1,520 was paid in advance for rent by the lessee to the lessor on demand made by the lessor in pursuance of the above mentioned provision in the lease. This payment, it is found, satisfied the rent payable up to the end of 1314 Fasli. On the 20th of October 1903 the plaintiff purchased the property so leased at a sale in execution of a decree obtained against Sajjad Husain. He instituted the suit out of which this appeal has arisen for recovery of the rent for the year 1311 and part of 1312 Fasli, which had been already paid. He was met by the defence that the rent for that period had already been paid to Sajjad Husain under the provision in the lease. The

* Second Appeal No. 881 of 1905 from a decree of D. R. Lyle, District Judge of Moradabad, dated the 29th of June 1905 reversing a decree of Ajudhia Prasad, Assistant Collector, 1st Class, Sambhal, dated the 11th of May 1905.

Court of first instance (Assistant Collector) decreed the plaintiff's claim practically in full. On appeal by the defendants, however, this decree was reversed and the suit dismissed. The plaintiff appealed to the High Court.

Sir *Walter Colvin*, Mr. *W. K. Porter* and Lala *Girdhari Lal Agarwala*, for the appellant.

Mr. *Abdul Majid*, for the respondents.

STANLEY, C.J., and BURKITT, J.—The question for determination in this litigation is a novel one. One Sajjad Husain was the owner of certain property at or prior to the year 1898. On the 21st of September of that year he granted a lease to the defendant of portion of this property for a term of 10 years, that is, from 1306 to 1315 Fasli (inclusive). The lease contains a very unusual provision to the effect that if at any time during the currency of the lease, the lessor should demand any portion of the rent in advance from the lessee, the latter would be bound to pay it on obtaining a receipt. The lease was registered and is not disputed here. On the 25th of December 1902 a sum of Rs. 1,520 was paid in advance for rent by the lessee to the lessor on demand made by the lessor in pursuance of the provision in the lease to which we have referred. This payment, it is found, satisfied the rent payable up to the end of 1314 Fasli. On the 20th of October 1903 the plaintiff appellant purchased the property so leased at a sale in execution of a decree obtained against Sajjad Husain. He instituted the suit out of which this appeal has arisen for recovery of the rent for the year 1311 and part of 1312 Fasli, which had been already paid. He was met by the defence that the rent for that period had already been paid to Sajjad Husain under the provision in the lease.

The question is whether under such circumstances this is a good defence to the suit. As we have said, the lease is a registered document and the plaintiff appellant must be deemed to have purchased with knowledge of it. It was open to him when he was contemplating the purchase to make inquiry of the lessor or lessee as to whether or not any rent had been paid in advance according to the provision in the lease. He appears to have neglected to do so and purchased the property, no doubt, in the belief that he would be entitled to the rent from the date of purchase for the

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remainder of the term. But for the fact that the lease was a registered document, and that the rent had been paid *bonâ fide* in advance, in accordance with the condition in it, the plaintiff would probably have been in a position to establish his claim; but in view of the fact that the lease was registered and that payment of the rent claimed has been made in accordance with it *bonâ fide* before the date of the plaintiff's purchase, we are unable to dissent from the decision of the learned District Judge. The payment of rent before it becomes due is not ordinarily a fulfilment of the obligation imposed by a covenant to pay rent, but is in fact an advance to the lessor with an agreement on his part that when the rent becomes due such advance will be treated as a fulfilment of the obligation to pay the rent—see *De Nicholls* v. *Saunders* (1). We must hold, in view of the facts in this case, that the rent sought to be recovered in this suit was satisfied pursuant to the provisions of the lease by the advance previously made. The plaintiff appellant cannot complain, inasmuch as he did not take the precaution of making inquiry as to whether or not any money had been paid in advance as provided for by the document. We therefore dismiss the appeal with costs.

Appeal dismissed.

PRIVY COUNCIL.

P.C.
1907
October 29,
December 5.

SURAJMANI AND OTHERS (DEFENDANTS) *v.* RABI NATH OJHA AND ANOTHER (PLAINTIFFS).

[On appeal from the High Court of Judicature at Allahabad.]

Hindu law—Gift—Construction of deed of gift—"Malik"—Gift to widow as "malik wa khud ikhtiyar"—"Absolute ownership"—Heritable and alienable estate—No distinction between male and female donee.

A Hindu executed a deed of gift of immovable property, to take effect after his death, to each of his two wives and his daughter-in-law, "as owners (maliks) with proprietary powers." One of his widows on coming into possession of her share made a will disposing of it in favour of her brother. In a suit by the next heirs of the donor questioning her power of alienation

Held that in the true construction of the deed the widow took a heritable and transferable estate in the property. The use of the word "malik" implies "absolute ownership" unless there is anything in the context or

Present:—Lord ROBERTSON, Lord COLLINS, and Sir ARTHUR WILSON.

(1) (1870) L. R., 5 C. P., 589.