1911
April, 1.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Banerji.

SUNDAR SINGH AND OTHERS (DEFENDANTS) *v.* THE COLLECTOR OF SHAHJAHANPUR (PLAINTIFF).*

Act (Local) No. II of 1901 *(Agra Tenancy Act), section* 158*—Definition—"Successor"—Transferee of a rent-free grantee.*

Held that a transferee from a rent-free grantee is a successor of the grantee within the meaning of section 158 of the Agra Tenancy Act, 1901.

THE material facts of this case appear from the following order of BANERJI, J.:—

"The suit out of which this appeal arises was brought under sections 150 and 156 of the Agra Tenancy Act, for the resumption of a rent-free grant and for assessment of rent. The defence was that the grant was held by the grantee and by three successors of the original grantee for ninety years and that the defendant had thus acquired proprietary title to the land in question. The court of first instance found that the land was held rent-free by the defendants and their predecessors in title for eighty years, and that the defendants had thus acquired proprietary title. It, accordingly, dismissed the suit. An appeal was preferred to the District Judge, and the first ground of appeal was that the defendants had not acquired any proprietary right in respect of the land in suit. The learned Judge entertained the appeal and held that the land had not been in the possession of the original grantee and of two successors of such grantee. He was of opinion that section 158 of the Agra Tenancy Act did not apply and that the land was liable to resumption and to assessment of rent. He made a decree for resumption and assessed the land with a rent of Rs. 4 per acre The first contention in this appeal is that the lower court had no jurisdiction to entertain the appeal, inasmuch as the suit was one of the description of suits mentioned in group C of Schedule IV of the Act, and an appeal lay to the Commissioner. This contention is not well founded, inasmuch as the question of proprietary title was in issue in the court of first instance and was also a matter in issue in appeal. Under section 177, clause (*c*) of the Act, an appeal lies to the District Judge from a decree of the Assistant Collector of the first class in all suits in which a question of proprietary title has been so in issue. The learned Judge, therefore, had jurisdiction to entertain the appeal. It is next urged that, even if an appeal lay to the District Judge, he was not competent to assess the land to rent, as it was the exclusive jurisdiction of the Revenue Court to make such assessment. There is no force in this contention. As the appeal in the suit lay to the District Judge, he had full power to make such decree as the court of first instance, namely, the Revenue Court, could make and ought to have made. It is next urged on behalf of the appellants that there is no evidence on the record to support the finding of the lower court that the original grantee was Chatar Singh and that the names of the appellants were recorded against the land in dispute only two years ago. The learned Judge says in his judgement that the original

* Second Appeal no. 706 of 1909 from a decree of B. J. Dalal, District Judge of Shahjahanpur, dated the 9th of February, 1909, reversing a decree of Jagmohan Nath, Assistant Collector, first class, of Shahjahanpur, dated the 31st of August, 1908.

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grantee was Chatar Singh, father of Niwazi, whose sons are the defendants, and that the names of the defendants had been entered two years ago. The court of first instance framed only two issues, the second of which related to the amount of rent to which the land in question might be assessed. The first issue did not lay down any question as to who the original grantee was and how many successors of the said grantee had held possession of the land in question. It framed no issue as to the defendants' title and how the defendants acquired it, nor whether the defendants' names had been entered only nominally or as real transferees from Niwazi Singh. The parties, therefore, had no opportunity of adducing evidence on these points, and on the record as it stands there appears to be no evidence except that of the patwari and two extracts from the khatauni and settlement register. I think it is essential for the right determination of this appeal to have clear findings from the court below on the following issues, which I refer to that court under the provisions of order XLI, rule 25, of the Code of Civil Procedure:—

(1) Who was the original grantee of the land in question?

(2) How many successors to the said grantee have held the land in question rent-free and for what length of time?

(3) Have the defendants acquired the land in question, and, if so, when and by what title?

"The court below will take such additional evidence as the parties may adduce. On receipt of its findings ten days will be allowed for objections."

The court below found on the issues as follows:—

"1. The original grantee appears to have been one Lalji.

"2. The evidence on the record leads me to believe that Niwazi Singh succeeded Lalji. Niwazi gives a long list of successors, Lalji's brother, their mother, and finally himself. His witnesses talk by rote and are not to be depended upon. Niwazi married Lalji's daughter, so the likelihood is that he was given the land either at the time of his marriage or on Lalji's death. I hold that Niwazi succeeded Lalji. It is not clear at what particular time the proprietor agreed not to collect rent from Lalji. Anyway, it is fairly certain, that at least more that fifty years prior to the institution of the suit, the holding became a rent-free grant.

"3. Since 1901 (1311 Hijri) the defendants have been in possession of the land and their names have been recorded as tenants in the village papers. Niwazi has stated that he gave the land to his sons, the defendants. There was a transfer, though not evidenced in the manner required by law. The proprietor has sued the defendants, thereby showing that he has accepted them as their father's successors. The defendants have acquired the land by consent of the actual owner and by mutation of names in the village papers in 1903. Practically, Niwazi is the only person who can obtain possession back from them. Whether the defendants are such successors of Niwazi as is contemplated by section 158, remains to be decided. As the proprietor has accepted them as rent-free grantees, I am of opinion that they should be considered Niwazi's successors within the meaning of section 158.

"I may point out that, even if the defendants were declared proprietors they cannot escape payment; they must pay revenue, in place of rent."

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On receipt of the findings the following order was passed:—

BANERJI J.—In this as well as in the connected appeal No. 707 of 1909, the question arises whether a transferee from a rent-free grantee can be regarded as a successor of the grantee within the meaning of section 158 of the Agra Tenancy Act. The question does not seem to be covered by any authority and is one of some importance. I, therefore, refer this and the connected appeal No. 707 of 1909 to a Bench of two Judges.

Munshi *Gulzari Lal* (for Babu *Benode Behari*), for the appellants.

Mr. *A. E. Ryves*, for the respondent.

STANLEY, C. J., and BANERJI, J.—The suit out of which this appeal has arisen was brought by the respondent for the resumption of a rent-free grant. The defence was that under section 158 of the Agra Tenancy Act the defendants had acquired proprietary title by reason of the land having been held rent-free by the original grantee and by two successors to the grantee for a period of upwards of 50 years. It has been found that the grant was made to one Lalji more than 50 years ago, that upon Lalji's death his son, Niwazi, made a gift of it to the defendants. It is contended that by the expression "successors to the original grantee" in section 150 of the Agra Tenancy Act, it was intended that the grant must be in the possession of lineal descendants of the original grantee. It may be that the intention of the Legislature was that this should be so, but the word used is "successors," and that word is wide enough to include not only an heir but a transferee also. We have to construe the section as it stands, and we are not competent to place any limitation on the language used by holding that the word 'successors' does not mean successors of every description, including a transferee, but only successors by right of inheritance. The same view was taken by our brother RICHARDS in Second Appeal No. 175 of 1910, decided on the 14th of February, 1911, which has not yet been reported. Accordingly we allow the appeal, set aside the decree of the lower appellate court and restore that of the court of first instance with costs in all courts.

Appeal allowed.