

1913
 RAM CHAN-
 DRA
 v.
 ALI MUHAM-
 MAD.

plaintiffs and the defendants. In these circumstances we do not think it necessary to interfere with the decree. The appeal is dismissed with costs.

Appeal dismissed.

1913

February, 14.

Before Mr. Justice Sir Harry Griffin and Mr. Justice Chamier.

HADI HASAN KHAN (PLAINTIFF) v. PATI RAM (DEPENDANT) *

Act (Local) No. II of 1901 (Agra Tenancy Act), section 4, chapter X—"Land"—Resumption of rent-free grants—Grove-land—Suit for resumption of grove-land not maintainable in Revenue Court.

Held that grove-land not being "land held for agricultural purposes" within the meaning of section 4 (2) of the Agra Tenancy Act, 1901, nor "land" within the meaning of Chapter X of the Act, no suit will lie in a Revenue Court for resumption of a rent-free grant of grove-land. *Sheo Mangal v. Sardar Singh* (1) and *Megh Singh v. Nasar Fatma* (2) referred to.

THIS was a suit under sections 150 and 154 of the Agra Tenancy Act, 1901, for resumption of a rent-free grant. The plaintiff alleged that the grant was made for the performance of a specific service in connection with the *Holi*, which he no longer required. The court of first instance (an Assistant Collector of the first class) decreed the claim. On appeal, however, this decision was reversed by the District Judge, on the ground that the land, being grove-land, was not 'land held for agricultural purposes' within the meaning of section 4 (2) of the Tenancy Act, and was not 'land' within the meaning of the word as used in Chapter X of the Act. The suit was accordingly dismissed. The plaintiff appealed.

The Hon'ble Dr. *Tej Bahadur Sapru* and *Maulvi Muhammad Rahmatullah*, for the appellant.

Munshi Govind Prasad, for the respondent.

GRIFFIN and CHAMIER, JJ. :—This was a suit under sections 150 and 154 of the Tenancy Act for resumption of a rent-free grant. The plaintiff alleged that the grant was made for the performance of a specific service in connection with the *Holi*, which he no longer required. The Assistant Collector decreed the claim, but on appeal his decision was reversed on the ground that the land, being grove-land, was not 'land held for agricultural purposes' within the

* Second Appeal No. 413 of 1913 from a decree of F. E. Taylor, District Judge of Bareilly, dated the 27th of February, 1912, reversing a decree of Abdul Hadi Khan, Assistant Collector, First Class, of Bareilly, dated the 4th of September, 1911.

(1) (1909) 6 A. L. J., 749.

(2) Select Decisions of 1911, No. 4.

meaning of section 4 (2) of the Tenancy Act, and was not 'land' within the meaning of the word as used in Chapter X of the Act.

In the papers prepared at the settlement of 1836 and 1872 the land was recorded as held under a service grant, and during the current settlement it is recorded as a rent-free grant, and the *wajib-ul-arz* says that the land shall be held subject to the service to be rendered at the *Holi*.

The District Judge has not recorded a definite finding that the land is held rent-free on account of the service, but on the evidence no other conclusion is possible.

The plot however is a grove, apparently a mango grove, and has been recorded as such at all the three settlements. 'Land' is defined in the Tenancy Act as land let or held for agricultural purposes. The latest reported opinion of the Board of Revenue is that a grove is not 'land' as defined in the Act—see *Megh Singh v. Nazar Fatma* (1), where a previous decision of the Board regarding a guava grove was considered and distinguished. In *Sheo Mangul v. Sardar Singh* (2) two Judges of this Court doubted whether a grove was land within the meaning of the definition contained in the Act but the question was not definitely decided and, as far we are aware, never has been decided by this Court.

It is impossible to say whether the plot was a grove when the grant now in question was made; but, assuming that it was not then a grove, it has been a grove since 1836, and it must be presumed that if the trees were not standing on the land at the time of the grant they were subsequently planted with the consent of the proprietor.

In our opinion land held as a grove, whether on payment of rent or not, is not land held for agricultural purposes, and we can discover no reason for holding that the word 'land' is used in Chapter X of the Act otherwise than in the sense indicated by the definition.

In this view it must be held that the suit was not maintainable under Chapter X of the Act, nor would it avail the plaintiff if we were to treat the suit as one for ejectment of a tenant, for a rent-free grantee is not a tenant as defined in the Act.

(1) Select Decisions of 1911, No. 4.

(2) (1909) 6 A. L. J., 749.

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It appears to us that if the plaintiff has any remedy it is by way of a suit in a civil court. The appeal is dismissed with costs.

Appeal dismissed.

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Banerji.
GOBARDHAN SAHI AND ANOTHER (DEFENDANTS) v. JADUNATH RAI AND ANOTHER (PLAINTIFFS) AND NANHU SAHI AND OTHERS (DEFENDANTS)*
Act No. III of 1877 (Indian Registration Act), section 17 (n)—Mortgage—Agreement to relinquish portion of principal and all interest—Acknowledgement—Registration.

Held that an agreement executed by a mortgagee after the date of the mortgage whereby he relinquished a certain part of the principal and all interest, past and future, on the mortgage in lieu of certain services rendered by the mortgagor to the mortgagee was a document which required registration to make it admissible in evidence, and it could not be said to be an acknowledgement of payment within the meaning of the exception contained in section 17, clause (n), of the Indian Registration Act, 1877.

THIS was a suit for sale upon a mortgage, dated the 21st of March, 1900. In answer to the suit *pro tanto* the defendants pleaded that after the mortgage had been executed the mortgagors rendered certain services to the mortgagee and that in consideration of those services a certain part of the principal and all interest up to date and all future interest were relinquished by the mortgagee. To prove this agreement a certain document was tendered in evidence. The document was unstamped and unregistered. The difficulty as to the stamp was got over by payment of the duty and penalty, but the lower appellate Court rejected the document as inadmissible for want of registration and decreed the claim in full. The defendants appealed to the High Court.

The Hon'ble Pandit *Moti Lal Nehru*, for the appellants.

The Hon'ble Dr. *Sundar Lal* and the Hon'ble Dr. *Tej Bahadur Sapru*, for the respondents.

RICHARDS, C. J., and BANERJI, J.—This appeal arises out of a suit brought to realize the amount of a mortgage, dated the 21st of March, 1900, by the sale of the mortgaged property. The defendants pleaded that after the mortgage had been executed the mortgagors rendered certain services to the mortgagee, and that

*Second Appeal No. 460 of 1912 from a decree of F. D. Simpson, District Judge of Gorakhpur, dated the 16th of January, 1912, confirming a decree of Jagat Narain, Subordinate Judge of Gorakhpur, dated the 13th of November, 1911.