

1915
 GANGES
 SUGAR WORKS
 LD.,
 v.
 NURI MIAH.

the Act if they thought fit. It is, however, unnecessary now to speculate as to what was the real intention. From the change that has been made in the law the provisions of the Act of 1882 evidently were found to be inapplicable to the conditions of the country. We think that the contract in the present case to refer to arbitration any future disputes which might arise between the company and the defendant was not an illegal contract but a contract which can be given effect to in the ordinary way. It is quite clear that section 123 only applies to submissions to arbitration which have been made in accordance with the provisions of the Act.

We accordingly allow the appeal, set aside the decree of the court below and remand the case to that court with directions to re-admit it upon its original number in the file and to proceed to hear and determine the same according to law having regard to what we have said above. Costs here and heretofore will be costs in the cause. The record may be sent down so that the court below may dispose of the case as soon as possible.

Appeal decreed and cause remanded.

Before Mr. Justice Tudball and Mr. Justice Raftg.

1915
 February, 17.

RANG LAL KUNWAR AND OTHERS (JUDGEMENT-DEBTORS), v. KISHORI LAL AND OTHERS (DECREE-HOLDERS).*

Act (Local) No. II of 1901 (Agra Tenancy Act), section 20 (2)—Occupancy holding—Transfer—Mortgage executed before the Act came into force—Execution of decree.

A usufructuary mortgage of an occupancy holding executed before the coming into force of the Agra Tenancy Act, 1901, is a good mortgage. *Babu Lal v. Ram Kali* (1) and *Harbans Rai v. Sri Niwas Rao* (2) followed.

Where, therefore, the mortgagee, not having obtained possession under such a mortgage, gets a decree for possession, the judgement-debtor cannot set up section 20 of the Act as a bar to its execution.

THE facts of this case were as follows :—

An occupancy holding was usufructuarily mortgaged on the 25th of January, 1900, to one Dwarka Prasad, whose interest subsequently

* Second Appeal No. 1002 of 1914, from a decree of Ram Prasad, District Judge of Ghazipur, dated the 14th of April, 1914, reversing a decree of Muhammad Husain, Subordinate Judge of Ghazipur, dated the 15th of December, 1913.

(1) (1906) 3 A. L. J., 40.

(2) (1911) 8 A. L. J., 1301.

devolved upon the present decree-holders, Kishori Lal, and others. Possession was not given to the mortgagee, who brought a suit in which he sought in the alternative either to recover his money or get possession of the property. On the 6th of June, 1912, a decree for possession was awarded to the mortgagee as such. An objection was taken in the course of the suit by the defendants that the transfer was illegal and that the plaintiffs were not entitled to possession. The court decided in favour of the mortgagee, holding that the mortgage was valid and that the plaintiffs as such were entitled to possession and accordingly it gave a decree for possession. Having obtained the decree, execution was sought, and again the judgement-debtors came forward and pleaded that possession could not be given to the decree-holders in execution of the decree by reason of section 20 of the Tenancy Act. The Subordinate Judge allowed this plea and dismissed the application. The lower appellate court set aside the decision of the first court and ordered possession to be delivered to the decree-holders in execution of the decree. The judgement-debtors appealed to the High Court.

Mr. *M. L. Agarwala*, for the appellants.

Munshi *Damodar Das*, for the respondents.

TUDBALL and RAFIQ, JJ.—This is a second appeal by the judgement-debtors. An occupancy holding was usufructuarily mortgaged on the 25th of January, 1900, to one Dwarka Prasad, whose interest has now devolved upon the present decree-holders, Kishori Lal, &c. Possession was not given to the mortgagee, who brought a suit in which he sought in the alternative either to recover his money or get possession of the property. On the 6th of June, 1912, a decree for possession was awarded to the mortgagee, as such. An objection was taken in the course of the suit by the defendants that the transfer was illegal and that the plaintiffs were not entitled to possession. The court decided in favour of the mortgagee, holding that the mortgage was valid and that the plaintiffs as such were entitled to possession and accordingly it gave a decree for possession. Having obtained the decree execution was sought, and again the judgement-debtors came forward and pleaded that possession could not be given to the decree-holders in execution of the decree by reason of section 20 of

1915

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1915

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v.
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the Tenancy Act. The Subordinate Judge allowed this plea and dismissed the application. The lower appellate court has set aside the decision of the first court and has ordered possession to be delivered to the decree-holders in execution of the decree. The judgement-debtors come here in second appeal, and it is urged that, whatever may have been decreed, still clause (2) of section 20 says clearly that the interest of an occupancy tenant is not transferable in execution of a decree of the Civil Court and therefore the Civil Court's decree cannot be executed. In view of the decision of this Court in the case of *Babu Lal v. Ram Kali* (1) and in *Harbans Rao v. Sri Niwas Rao Kalin* (2), the plea has absolutely no force at all. It has been decided as between the parties finally in the course of this suit that the plaintiffs are entitled to possession. The decree has been obtained. Under the rulings of this Court the mortgage, which was made before the present Tenancy Act came into force, was a good one and the mortgagee was therefore entitled to enforce his decree. Over and above this the executing court cannot go behind the decree. That decree states that the plaintiff shall be put into possession and the court is bound to execute it. There is no force in the appeal, we dismiss it with costs.

Appeal dismissed.

Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir
Pranada Charan Banerji.

1915
February, 18.

SUNDAR KUNWAR (PLAINTIFF) v. DINA NATH AND OTHERS (DEFENDANTS)*
Act (Local) No. II of 1901, (Agra Tenancy Act), sections 4 and 19—Question of proprietary title—Jurisdiction—Civil and Revenue Courts—Res judicata.

In a suit for ejectment in a Revenue Court (Assistant Collector) the defendants pleaded that the plaintiff "brought them from their village and established them in the property promising that they should have the property in suit." The Revenue Court found that these were the true facts, and came to the conclusion that the defendants were "rent-free holders of the land in suit, which was given to them in gift by the plaintiff." The plaintiff appealed to the Commissioner, who confirmed the finding of the Assistant Collector.

Held that the plaintiff could not reopen in a Civil Court the question of the defendants' right to the land, inasmuch as the decision of the Assistant Collector

* First Appeal No. 318 of 1913, from a decree of Ganga Sahai, Subordinate Judge of Moradabad, dated the 2nd of May, 1913.

(1) (1906) 3 A. L. J., 40.

(2) (1911) 8 A. L. J., 1301.