

Reports, 10 Bombay, page 656, which is somewhat in favour of the appellant. The appellant, however, is met at the forefront of this appeal by a series of rulings of this Court commencing from I. L. R., 2 All., 565 and ending with I. L. R., 29 All., 262. It is clear on the face of these rulings that the plaintiff is entitled only to redeem the share which she owns in the mortgaged property, and that share is much less than Be. 0-2-8. We can see no good reason to differ from a long series of decisions which have prevailed in this Court, especially when the rulings of this Court are based on a ruling of their Lordships of the Privy Council. In our opinion the decision of the court below is quite correct. We therefore dismiss this appeal with costs.

Appeal dismissed.

Before Mr. Justice Tudball and Mr. Justice Muhammad Rafiq.

MALIK AKBAR ALI KHAN (PLAINTIFF) v. SHAH MUHAMMAD (DEFENDANT).^{*}
*Act No. V of 1881 (Indian Easements Act), section 60—Licence—Denial
 by licensee of licensor's title.*

Held that a licensee in possession does not, like a tenant, by denying the title of the grantor of the licence, forfeit the licence and become liable to immediate ejectment. *Dharam Kunwar v. Fakira* (1) followed.

THIS was a suit in ejectment. The plaintiff came into court alleging that the defendant was his tenant. The defendant, however, set up a licence, and it was subsequently admitted that the defendant was a licensee. The main ground alleged for the dispossession of the defendant was that he had, in a previous suit, denied the title of the plaintiff to the land in respect of which the licence was granted. In the present suit, however, the defendant admitted the title of the plaintiff. The court of first instance dismissed the suit and on appeal the lower appellate court confirmed the first court's decree. The plaintiff thereupon appealed to the High Court.

The appeal coming on for hearing before TUDBALL, J., was referred to a Division Bench by the following order :—

“The question which arises in the present case for decision is one which is covered by a decision of this Court. It clashes

^{*} Second Appeal No. 1559 of 1915, from a decree of Parmanand, District Judge of Shahjahanpur, dated the 4th of September, 1915, confirming a decree of Radha Kishen, Munsif of Shahjahanpur, dated the 22nd of May, 1915.

(1) Weekly Notes, 1901, p. 157.

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somewhat also with a more recent decision in very similar circumstances which is to be found in 14 A. L. J., 115 (*Anand Sarup v. Chawwa.*) Under the circumstances I think it advisable to refer this case to a bench of two Judges for decision. I order accordingly.”

Dr. S. M. Sulaiman, for the appellant.

Pandit Mohan Lal Sandal, for the respondent.

TUDBALL and MUHAMMAD RAFIQ, JJ.:—This case was decided in both the courts below on the admission that the defendant was in possession of the land as a licensee and the plaintiff was a licensor. This was not in accordance with the actual pleadings of the parties. In the plaint the plaintiff alleged a tenancy. The defendant alleged, on the other hand, a licence, but apparently, as we see from the judgement of the court of first instance, it was subsequently admitted that the defendant was in possession of the land as a licensee. Clearly that was the position which the plaintiff appellant took up in the lower appellate court also and it is the position which is taken up in the one ground in the memorandum of appeal filed in this Court. The courts below have decided the case in view of the decision of a Bench of this Court in *Dharam Kunwar v. Fakira* (1). The plea taken before us is that the defendant having denied the plaintiff's title altogether, his licence is liable to be revoked and he should have been ejected. It was in the previous suit between the parties that the defendant denied the plaintiff's title, and in that the question of title was decided in the plaintiff's favour. In the present suit the defendant has admitted the plaintiff's title. The ruling in question is the only ruling to which our attention has been called. It is admittedly against the appellant's contention. It was therein laid down that a licensee in possession does not, like a tenant, by denying the title of the grantor of the licence, forfeit the licence and become liable to immediate ejectment. The two Judges who decided that case remarked as follows :—“No authority, either from the Indian or English reports, has been cited to us in support of the contention that in such a case a licensee is in the same position as a tenant who denies his lessor's title, and we see no reason why

(1) Weekly Notes, 1901, p. 157.

we should extend the rule of forfeiture and make it applicable to a licensee. The grantor of the licence has ordinarily power by revocation to put an end to the licence and that may be the reason why the same rule has not been made applicable to a licensee denying the title of the grantor of the licence as to a tenant denying his landlord's title. It is to be noticed also, as regards Indian legislation, that although the Transfer of Property Act provides for forfeiture of his tenancy by a tenant denying his landlord's title, no such provision has been made regarding a licensee in the Chapter of the Easements Act which deals with licenses." It may seem anomalous that a tenant who denies his landlord's title is liable to forfeiture of his lease, whereas a licensee may deny a licensor's title without any such liability to forfeiture, but it is correct that there is no such provision in the Easements Act such as has been made in the Transfer of Property Act, section 111. In this state of the law we think that it would be proper to accept the ruling in the case mentioned, inasmuch as no good reason has been shown why we should differ from it. We therefore follow that ruling and in that view the appeal must fail. We therefore dismiss it with costs.

Appeal dismissed.

REVISIONAL CRIMINAL.

Before Justice Sir George Knox, Acting Chief Justice.

EMPEROR v. KATWARU RAI AND OTHERS*.

Act No. XLV of 1860 (Indian Penal Code), sections 71, 147 and 323—Criminal Procedure Code, sections 35 and 235.—Separate convictions for rioting and causing hurt.

Where, several persons being on their trial on a charge of rioting, it appears that some of them have also committed the offence of causing simple hurt under section 323 of the Indian Penal Code, there is no legal objection to charging such persons under that section and convicting them of, and sentencing them for, such offence as well as for the offence of rioting.

KATWARU RAI and six other persons were convicted on a joint trial of the offence of rioting under section 147 of the Indian Penal Code, and were sentenced to varying terms of imprisonment.

*Criminal Revision No. 433 of 1917, from an order of G. C. Badhwar, Sessions Judge of Ghazipur, dated the 8th of May, 1917.

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