

## APPELLATE CIVIL.

1920

February, 13.*Before Mr. Justice Tudball and Mr. Justice Muhammad Rafiq.*

MANSA RAM (PLAINTIFF) v. GANGA RAM (DEFENDANT) \*.

*Act (Local) No. II of 1901 (Agra Tenancy Act), section 10—Ex-proprietary tenant—Contract to pay a higher rate of rent than that prescribed by law invalid.*

*Held* that the provisions of section 10 of the Agra Tenancy Act, 1901, are mandatory, and it is not competent to an ex-proprietary tenant to contract himself out of the section and agree to pay a rent in excess of that laid down thereby. *Prag v. Sital Prasad* (1) followed.

THE facts of this case are fully stated in the judgment of the Court.

Dr. Surendra Nath Sen, for the appellant.

Babu Piari Lal Banerji, for the respondent.

TUDBALL and MUHAMMAD RAFIQ, JJ. :—The facts of this case may be briefly stated as follows :—One Ganga Ram mortgaged his property on the 27th of November, 1896, to one Tika Ram. It was apparently a usufructuary mortgage, because he took from Tika Ram a lease of his *sir* lands agreeing to pay a rent of Rs. 60. In December, 1908, he sold his equity of redemption to Mansa Ram, the present appellant before us, and he then executed a *kubuliat*, which was registered, under which he continued to hold his *sir* lands at the rental of Rs. 60. His *sir* lands constituted two holdings, the rental of one was fixed at Rs. 12 and the rental of the other at Rs. 48. He clearly at that time was an ex-proprietary tenant, but the patwari, for reasons best known to himself, recorded him as a non-occupancy tenant. In 1913, Mansa Ram redeemed the mortgage and became full proprietor of the estate. He then brought a suit to eject Ganga Ram from the holding, the rent of which was Rs. 12. In that case they came to an agreement and filed a compromise. Under the compromise, Mansa Ram agreed that Ganga Ram should be recorded as the occupancy tenant of the land in both the holdings and Ganga Ram agreed that he would in future pay a rent of Rs. 70 per year in lieu of Rs. 60, and on this agreement the ejectment suit was dismissed. Mansa Ram has now sued

\* Appeal No. 33 of 1919, under section 10 of the Letters Patent.

Ganga Ram for rent. The first court dismissed the suit, holding that the agreement was not binding on Ganga Ram as it was contrary to the provisions of section 10 of the Tenancy Act. The lower appellate court decreed the suit, holding that there was no reason why Ganga Ram should not be bound by the compromise. On second appeal to this Court, the learned Judge who heard it held that the provisions of section 10 of the Tenancy Act were mandatory and that Ganga Ram could not be allowed to contract himself out of his rights under that section, as that would be clearly contrary to the policy of the Act and would make the provisions of section 10 entirely nugatory. The plaintiff comes here on appeal under the Letters Patent and his plea is that there is nothing on the record whatsoever to show that the rent agreed to between Ganga Ram and Mansa Ram was a rent which was in excess of that which would be fixable according to the provisions of section 10 of the Tenancy Act. The learned Judge of this Court placed reliance on the ruling in the case of *Prag v. Sital Prasad* (1). The learned vakil for the appellant does not seek to go outside that decision. He points to the fact that in that case the rate of rent agreed upon was Rs. 8 per bigha, whereas the fair rate of rent under section 10 of the Act would have been Rs. 3-11. In the present case, however, the defendant clearly raised the plea that the agreement was not binding on him and was contrary to law. If the rate of rent agreed upon between the parties had been less than that fixable under section 10 of the Act, the plaintiff not only would, but ought to have replied to the defence by pointing out that the rent agreed upon was less than the statutory rent, or at least not in excess of it. This he did not do, nor did he raise this question of fact either in the court of first instance or in the lower appellate court. We think it is too late for him to raise it now, and that the case must be decided on the assumption that the rent agreed upon between the parties was in excess of the statutory rent. This being so, in view of the ruling of this Court, the suit was properly dismissed. This appeal must fail and we dismiss it with costs.

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*Appeal dismissed.*

(1) (1914) I. L. R., 26 All., 155.