courts below must be affirmed, but as we do not agree entirely with the reasons given by the learned District Judge we make no order as to the costs of this appeal.

Appeal dismissed.

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RAM BRICHH RAI v. DEGO TIWARI

Before Mr. Justice Piggott and Mr. Justice Walsh.

MATHURA PRASAD (DEFENDANT) *v.* RAMESHWAR AND ANOTHER (PLAINTIFFS)*.

1921 *November*, 9.

Act (Local) No. II of 1901 *(Agra Tenancy Act), section* 158—*Rent-free grant in favour of an idol*—"*Two successors to the original grantee*"—*Whether successive priests in office can be deemed to be such successors.*

Where property is given rent-free to an idol at a particular shrine, as distinguished from the priest of the shrine, it is not open to the priest for the time being, after the lapse of a certain time, to claim the benefit of section 158 of the Agra Tenancy Act upon the ground that the property had been held by two or more successors to the original grantee. *Bharat Das* v. *Nandrani Kunwar* (1) referred to.

THESE were two appeals under section 10 of the Letters Patent. The facts out of which the matter for determination arose are fully stated in the judgment of the Court.

Babu *Piari Lal Banerji* and Munshi *Bhagwati Shankar*, for the appellant.

Dr. *Kailas Nath Katju*, for the respondent.

PIGGOTT and WALSH, JJ.:—These are two connected appeals arising out of two connected suits which have been litigated together throughout. The appeals may be disposed of by a single judgment. The suits were filed in the court of an Assistant Collector. The plaintiff, as lambardar and proprietor of two specified plots of land, sued the defendant as a rent-free grantee of the same and, admitting himself not to be entitled to resume the grant, claimed assessment of rent on the same. The written statement, as is often the case, was somewhat loosely drawn up, but beyond all question the substantial defence on the facts was that the defendant being a rent-free grantee of the land in question, had held the same as such for more than fifty years and through at least two successors to the original grantee and was, therefore, entitled to be declared proprietor of the same and to be assessed to revenue but not to rent. This refers, of course, to the provisions of section 158 of the Tenancy Act (Local Act II of 1901). The Assistant Collector who tried the

* Appeal No. 12 of 1921, under section 10 of the Letters Patent.

(1) (1917) I. L. R., 39 All., 689.

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two suits accepted this defence as established in fact and in law, and framed his decrees accordingly. On first appeal the District Judge reversed the finding of the first court on this precise point. He held that the defendant, however long he may have been in possession of the plots of land in suit, had certainly not held the same through two successors to the original grantee. He remitted issues on the question of the rate of rent payable, and finally decreed the plaintiff's suit, assessing rent on the two plots of land on the basis of the rent paid by tenants without right of occupancy in respect of similar plots of land in the neighbourhood. The defendant appealed to this Court. His memorandum of appeal raises various points, but he did beyond question challenge the finding of the lower appellate court with regard to the applicability of section 158 of the Tenancy Act. He also pleaded that, in any event, the rent assessed should have been on the basis of a finding that he had at least a right of occupancy in respect of the land in suit. The judgment of the learned Judge of this Court who disposed of the two appeals shows that the arguments before him wandered over a somewhat wide field and that the essential points in dispute had become somewhat overlaid and thrust out of sight by the time he came to deliver judgment. It seems to have been contended before him that the suits in question were not cognizable by a Rent Court, a contention which he had no difficulty in repelling. Obviously the suits as brought were suits under Chapter X of the Tenancy Act and cognizable by a Rent Court only. The plaintiff had to make out the essential facts alleged by him in order to bring the suits within the operation of the chapter. If he failed to do this the suits would be dismissed upon the findings of fact, but the suits as brought were unquestionably cognizable by the court which tried them.

Finally, the learned Judge of this Court affirmed the decision of the District Judge and, after remitting further issues regarding the rate of rent, passed orders the effect of which was to dismiss the appeal. The memorandum of appeal before us again raises the two principal points which have been already referred to. There is, however, a further plea which may be said to raise once more in a slightly modified form the question which was

discussed by the learned Judge of this Court as one of jurisdiction. The argument laid before us on this point may be stated in two slightly different forms. Firstly, it was contended that the original grant in favour of the defendant was not the grant of a rent-free holding, but a gift of the proprietary rights in the land itself. In our opinion there is no basis for this contention, either in the pleadings, or in the findings of fact recorded by the lower appellate court. The suggestion is that the description of the land in the revenue papers, and the use of the word 'Shankalap' as a description of the nature of the grant in favour of the defendant, necessarily involve a transfer of the proprietary rights in the land itself in favour of the latter. In order to maintain such a contention in second appeal, and even more so in an appeal under the Letters Patent, it would be incumbent on the person raising it to plead, and to show from the record, that documentary evidence establishing his contention of fact had either been disregarded by the court of first appeal or misinterpreted. There has never been any pleading to this effect from first to last. Moreover, the defendant's written statement in the trial court, fairly interpreted, amounts to an admission of the fact that his position was that of a rent-free grantee and nothing more.

Secondly, the point is put in this way, that the provisions of section 151 of the Tenancy Act cover this case, because it should be held on the evidence that the defendant acquired this rent-free holding for valuable consideration and that the right of resumption is now barred. Here again we may say that we should find it very difficult to read any such contention into the pleadings, as they stood either in the trial court or in the court of first appeal; but in any case we are clearly of opinion that the facts before us would not warrant a finding that there had been "valuable consideration" in favour of the grantor at the time of the grant.

Passing over these points, we may now come to the two main questions which have been in issue throughout. The learned District Judge has found that the land in question, although it has no doubt been in the possession of the defendant for a long time, presumably for more than fifty years, has not been held by

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two successors to the original grantee. The contention before us is that this is a mixed finding of fact and of law and that the conclusion of the learned District Judge is vitiated by an error of law on his part. In this connection our attention has been drawn to a reported case, to which one of us was a party, that of *Bharat Das* v. *Nandrani Kunwar* (1). The judgment of the lower appellate court certainly suggests that the learned District Judge was not aware of this ruling, and we have had to consider it carefully, with reference to the findings arrived at by the court of first appeal, and to some extent with reference also to the pleadings and to the evidence on the record. We are satisfied that the present case is clearly distinguishable on the facts from the case of *Bharat Das* v. *Nandrani Kunwar* (1). In the judgment of that case particular stress is laid upon the fact that the original rent-free grant was in favour of the head or manager of a certain religious institution, although made for the benefit of a local shrine under the management of that institution. On those facts it was held that successive Mahants, or heads of a religious institution of this sort, may fairly be held to be "successors" to the original grantee, within the meaning of section 158 of Local Act II of 1901. The learned Judges expressed themselves with great caution and were at pains to limit the decision to the particular facts before them. We may go so far as to say that they felt that they were stretching the wording of section 158 aforesaid about as far as it could go and that they guarded themselves carefully against being supposed to lay down any principle which would stretch it too far. In the present case the finding is that the grant was in favour of the idol worshipped in a certain local shrine and this finding is borne out by the pleadings and by the evidence. We have come to this conclusion after carefully examining the record and in spite of the fact that there is some ambiguity about the form in which the plaint has been drawn up. We do not think that under the circumstances the particular priest who for the time being may be in charge as manager of the affairs of the temple in question, or of the worship of the idol as conducted therein, can be regarded as himself the grantee within the

(1) (1917) I. L. R., 39 All., 680.

meaning of the section above referred to, or that any priest who from time to time may succeed to the office can be treated as a successor to the original grantee within the meaning of the same section. This contention, therefore, in our opinion fails.

The only remaining point is as to the rate of rent. We are satisfied that we must modify the decree of the learned Judge of this Court. It certainly looks to us as if some confusion must have crept into the record when this Court came to re-examine it after the findings on the issues remanded by it had been returned. It is quite clear to us on the evidence that the defendant is entitled to be treated as an occupancy tenant of the land and to have rent assessed on the basis of the rent paid by occupancy tenants for land of similar quality in the neighbourhood. In fact, no serious argument to the contrary has been pressed upon us on behalf of the plaintiffs respondents. We have looked at the remand findings for ourselves and considered their bearing on the issue regarding the rate of rent. The result is that in our opinion the rent assessed on the plot of land of one bigha, five biswas, which is involved in the suit to which Letters Patent Appeal No. 12 of 1921 relates, should be fixed at Rs. 1-12-6 per annum; while on the plot of land of one bigha, four biswas, which is involved in the suit to which Letters Patent Appeal No. 13 of 1921 relates, the rent should be fixed at Rs. 1-11-5 per annum. We order that the decree of this Court, and also that of the lower appellate court, be modified to this extent, that the rent payable by the defendant be fixed as above stated. The result is that these two appeals have succeeded to a certain limited extent. We think the justice of the case will be fairly met if the parties bear their own costs of both the hearings in this Court, and we order accordingly.

Decree modified