

## APPELLATE CIVIL.

Before Mr. Justice Mukerji and Mr. Justice Bennet. 1932  
 HARAKH CHAND (PLAINTIFF) v. SAJIDA BEGAM AND January, 21.  
 OTHERS (DEFENDANTS).\*

*Civil Procedure Code, order XX, rule 11—Instalment decree  
 —Decree for arrears of rent against agricultural tenants—  
 Whether such decree can allow instalments—Agra  
 Tenancy Act (Local Act III of 1926), sections 79 and 80.*

In a suit under the Agra Tenancy Act, 1926, for recovery of arrears of rent against tenants other than permanent tenure holders and fixed-rate tenants a revenue court is not competent to pass a decree payable by instalments. The application of the provisions of order XX, rule 11, of the Civil Procedure Code to a decree for arrears of rent against such tenants would be inconsistent with the provisions contained in sections 79 and 80 of the Agra Tenancy Act.

Mr. Rama Kant Malaviya, for the appellant.

Dr. M. Wali-ullah, for the respondents.

MUKERJI and BENNET, JJ. :—This appeal arises out of a suit for recovery of arrears of rent, and the question that we have to decide is whether it is open to the revenue court to make a decree payable by instalments under the provisions of order XX, rule 11, of the Code of Civil Procedure.

The plaintiff, who is the appellant before us, brought the suit, out of which this appeal has arisen, for recovery of arrears of rent. The defendants admitted the claim, but asked for permission to pay by instalments. The learned Assistant Collector directed that the arrears decreed by him might be paid by three instalments. He took care to direct that in case of any instalment being overdue the whole decree might be executed. The plaintiff appealed to the District Judge, and the learned District Judge dismissed the appeal. The plaintiff has come up to us, and the argument of the learned counsel for the appel-

\*Second Appeal No. 1679 of 1929, from a decree of Akbar Husain, District Judge of Azamgarh, dated the 24th of July, 1929, confirming a decree of Raj Kishore Singh, Assistant Collector, First Class, of Azamgarh, dated the 7th of February, 1929.

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lant is that so far as tenants other than a permanent tenure holder and a fixed-rate tenant are concerned, the provision of order XX, rule 11, of the Code of Civil Procedure is inconsistent with the provisions contained in sections 79 and 80 of the Tenancy Act of 1926, and that, therefore, it was not open to the Assistant Collector to make a decree payable by instalments.

Under the provisions of section 79 of the Tenancy Act the decree-holder is entitled to execute the decree at once, the very next day after the passing of it, by the ejection of the tenant. We have already mentioned that certain classes of tenants are exempted from the operation of this rule. In the present case the tenants are neither permanent tenure holders nor tenants at fixed rate. If the landlord has this right of executing the decree the very next day after it is passed, the making of an instalment decree will take away from him that mode of execution which is open to him by section 79. Section 80 of the Tenancy Act lays down that a tenant must pay within fifteen days of the service of notice the amount of the decree sought to be executed by his ejection. The section provides certain facilities for the tenants to pay up and, with the consent of the decree-holder, the time for payment can be extended to six months. In our opinion, the application of order XX, rule 11 in the case of tenants other than a permanent tenure holder or a fixed-rate tenant would be inconsistent with the provisions of section 79 and section 80.

The view which we take was taken by two members of the Board of Revenue in a case decided under the Old Tenancy Act of 1901, *Liladhar v. Lalji* (1). In the result, we allow the appeal, modify the decrees of the courts below and grant a decree payable in a lump sum for the entire amount decreed by the court of first instance. The appellant will have his costs throughout.