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date of payment, the court can allow interest on the aggregate amount found due instead of on the principal sum lent". We may also refer to a single Judge case of this Court, *Tara Chand* v. *Habat Shah* (1). In this case it was held by a learned Judge of this Court that in a suit for sale brought by a mortgagee on basis of a hypothecation bond, the rate of interest to be awarded is the contractual rate for the period down to the date fixed for payment under order XXXIV, rule 4 of the Code of Civil Procedure.

We are clearly of opinion that the view taken in *Chhote Lal* v. *Mohammad Ahmad Ali Khan* (2) is not correct. In our judgment the words, "on the principal amount found or declared due" in clause (a), sub-clause (i) refer not only to the principal sum secured by the mortgage deed but also to the amount due on account of interest which has become a part of principal in accordance with the terms of the deed on the date when the preliminary decree is prepared. In our judgment there is no force in the contention that the legislature when they used the words "due or declared to be due" in rule 11 enacted that in calculating interest from the date of the suit till the date fixed for redemption no interest on interest was to be allowed to the mortgagee in spite of the terms of the mortgage deed.

For the above reasons we hold that the view taken by the court below is correct and we accordingly dismiss the appeal with costs.

Before Sir Shah Muhammad Sulaiman, Chief Justice, and Mr. Justice Bennet

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January, 22

LACHHMI NARAIN (DECREE-HOLDER) *v.* BATUK SINGH AND OTHERS (JUDGMENT-DEBTORS)*

Agra Tenancy Act (Local Act III of 1926), sections 23(1), 199, 203(1)—Agra Tenancy Act (Local Act II of 1901), section 20(3)—Permanent lease with powers to plant grove or construct buildings and make transfers—Whether thekadar or

*Appeal No. 88 of 1935, under section 10 of the Letters Patent.

(1) [1935] A.L.J., 1161. (2) (1932) L.L.R., 8 Luck., 315.

statutory tenant—Interest whether saleable in execution of a decree—Civil Procedure Code, section 60.

A permanent lease of some plots of land was given by the zamindar to persons who had been tenants of those plots; the lease was declared to be heritable, and it gave power to the lessees to plant a grove or construct buildings and to make all kinds of transfers, at their pleasure. The lease was granted while the Agra Tenancy Act of 1901 was in force, and under that Act the lessees were recorded as non-occupancy tenants under a permanent lease. After the Tenancy Act of 1926 came into force they were classed as statutory tenants; they had never been recorded as thekadars. No grove had been planted by them: *Held* that there was no lease of proprietary rights and the lessees were not in the position of thekadars: and, as no grove had been planted, they had not become grove-holders; the land remained land held for agricultural purposes and the lessees were agricultural tenants; and under section 23(1) of the Tenancy Act, 1926, their interest was not transferable in execution of a decree.

In section 20(3) of the Agra Tenancy Act, 1901, the clause, "subject to the terms of his lease", governs all the words which follow and is not limited only to the word "heritable" but also applies to the words "not transferable".

Mr. *K. L Misra,* for the appellant.

Mr. *Harnandan Prasad,* for the respondents.

SULAIMAN, C.J., and BENNET, J.:—This is a Letters Patent appeal in execution by a decree-holder who has lost his case before the two courts below and also before a learned single Judge of this Court. The appellant had a simple money decree and in execution of that decree he attached certain property belonging to the judgment-debtors. The objection taken by the judgment-debtors was that their interest was not attachable or saleable in execution of a civil court decree, and the courts below have upheld that contention.

On the 10th of February, 1919, two zamindars granted a permanent lease to the judgment-debtors of six plots of land of an area of 8·29 acres. The lease was a permanent lease and it stated that the judgment-debtors had been tenants of these plots and that the plots were

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now being given on a permanent lease and it provided that the lease would be heritable and that any arrangements could be made which the lessees desired and permission was granted for the lessees to plant a grove or construct buildings. It was further provided that the lessees could make all kinds of transfer they desired whether by way of gift or sale or otherwise. The annual rent was fixed at Rs.56-2-6 and the lessees paid Rs.250 *nazrana*. There is no doubt that the classification of this kind of lease presents some difficulties. It was executed at the time when the Tenancy Act II of 1901 was in force and the lessees were classed in the records as non-occupancy tenants under a permanent lease. When Act III of 1926 came into force, the lessees were classed as statutory tenants. At no time had the lessees ever been entered in the khewat as thekadars, that is, as lessees of proprietary rights. The present definition of thekadar as contained in section 199 of the present Tenancy Act is: "A thekadar is a farmer or other lessee of proprietary rights in land, and in particular of the right to receive rents or profits." Now as the collection of rents and profits is not the subject of lease but the mere possession of six plots, we do not consider that there is any lease of proprietary rights and we do not consider that the lessees are in the position of thekadars. In passing we may notice that we do not agree with the learned single Judge in his interpretation of section 20(3) of the former Tenancy Act, (Act II of 1901). That sub-section provides: "The interest of a thekadar is, subject to the terms of his lease, heritable, but not transferable." In our opinion, the clause "subject to the terms of his lease" governs all the words which follow and is not limited only to the word "heritable" but also applies to the word "transferable". Previous to this Act, the section in question read: "The interest of a thekadar is not heritable or transferable, unless so provided in his

lease." This has again been embodied in the law, in Act III of 1926, section 203(1), which states: "Except as may be otherwise provided by the terms of the theka, the interest of a thekadar (*a*) shall not be transferable, or be saleable in execution of a decree." The previous and the subsequent Acts show clearly that it may be provided in the theka that the interest of a thekadar is transferable and there is no doubt that in section 20(3) of the Act of 1901 the same provision was intended; and, further, we are of opinion that the natural construction according to the rules of grammar implies that the clause "subject to the terms of his lease" shall apply to the words "not transferable".

The remaining question now is, as urged by learned counsel for the appellant, that the rights created by this lease were wider than those of any tenant in the Tenancy Acts and as the lease gives the right of transfer and also gives the right to plant a grove and to build a house, therefore it cannot be said that the limitation of the Tenancy Acts against the transfer would apply. The present limitation is contained in section 23(1) which says that the interest of a statutory tenant is not transferable either in execution of a decree of a civil or revenue court or otherwise except in accordance with the provisions of this Act. Now learned counsel for the respondents admits before us that the provisions for transfer contained in the lease of his clients is a provision which is ineffectual and contrary to law and that his clients have not got any right of transfer and he claims that his clients therefore are in the position of statutory tenants. In the Transfer of Property Act section 117 provides: "None of the provisions of this chapter apply to leases for agricultural purposes." The question which we have to see is whether this lease is a lease for agricultural purposes. It may be that there are certain provisions in the lease by which certain use of the land could be made for purposes other than agriculture. It would be open to the lessee to plant the entire 8 acres with a

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grove, and if he did so, no doubt he would become a grove-holder and have a transferable interest; but he has not so planted a grove and we consider therefore that the first part of the definition of land in section 3(2) of the present Tenancy Act governs the case, that is, "land means land which is let or held for agricultural purposes". Grove-land is defined in section 2(15) as "any specific piece of land in a mahal having trees planted thereon in such numbers that when full grown they will preclude the land or any considerable portion thereof being used primarily for any other purpose". It is clear therefore that the land is not grove-land but is agricultural land. We are of opinion therefore that the property is property to which the restriction contained in section 23 will apply and the interest of the judgment-debtors is not transferable in the execution of the decree of the appellant. For these reasons we agree with the judgment of the learned single Judge and we dismiss this Letters Patent appeal with costs.

MISCELLANEOUS CIVIL

Before Sir Shah Muhammad Sulaiman, Chief Justice, and Mr. Justice Bennet

1937
January, 28

BISHNATH SINGH AND OTHERS (DEFENDANTS) *v.* COLLECTOR OF BENARES (PLAINTIFF)*

Civil Procedure Code, order XLVII, rule 1—*Review of judgment—Ground that appeal did not lie to that court—Over valuation—Jurisdiction—Suits Valuation Act (VII of* 1887), *sections* 8, 11—*Court Fees Act (VII of* 1870), *section* 7(xi) *(cc) —Suit to eject a thekadar—Whether thekadar is "tenant" within the meaning of Court Fees Act—Agra Tenancy Act (Local Act III of* 1926), *sections* 3(6), 199(1), 220, 242.

A suit for ejectment of a thekadar, paying an annual rent of Rs.111, was filed in the court of an Assistant Collector of the first class. The suit was valued for purpose of jurisdiction at Rs.6,000. The trial court dismissed the suit on the merits and the plaintiff filed an appeal to the High Court. No objection

*Application for review of judgment in First Appeal No. 348 of 1932.