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in *Kalicharan Chowdhari* v. *Beni Madho Prasad* (1). In that case interest was disallowed on the ground that the claim could not be made in law. Another ruling was unreported, *Bishunath Upadhya* v. *Asharfi Singh* (2), and the decision that interest could not be allowed on the claim for *zar-i-chaharum* was upheld in Letters Patent appeal No. 25 of 1935, decided on 9th December, 1935.

On the other hand learned counsel for plaintiff respondent is not able to show any case of *haq-i-chaharum* where interest has been allowed. We consider therefore that both on grounds of law and on the ground of no cause being made out for the exercise of equitable jurisdiction, the court below was wrong in allowing interest to the plaintiff. We therefore allow this appeal with costs and direct that the amount of interest Rs.1,118-8-0 should be struck off from the decree of the court below, which is the amount of interest up to the date of the suit, but *pendente lite* and future interests will remain in the decree. The amount of costs in the lower court was proportionate and as the decree has now been reduced the amount of costs in the lower court will be correspondingly reduced.

Before Mr. Justice Niamat-ullah, Acting Chief Justice, and Mr. Justice Verma

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MUKAT BEHARI LAL (DEFENDANT) *v.* MANMOHAN LAL (PLAINTIFF)*

U. P. Encumbered Estates Act (Local Act XXV of 1934), section 7(1)(b)—Interpretation—"Process" whether includes suits—Suit for ejectment from house for non-payment of rent—Suit "in respect of" a debt—Interpretation of statutes —Intention.

An interpretation of section 7(1)(*b*) of the U. P. Encumbered Estates Act, which is more in consonance with the intention of

*Second Appeal No. 513 of 1936, from a decree of A. H. Gurney, District Judge of Bareilly, dated the 4th of March, 1936, modifying a decree of Niraj Nath Mukerji, City Munsif of Bareilly, dated the 6th of January, 1936.

(1) [1937] A.L.J. 168.

(2) S. A. No. 1034 of 1932, decided on 19th December, 1934.

the legislature than the contrary interpretation, is that the phrase "other than" does not govern the words "a process for ejectment"; accordingly a process for ejectment is not one of the things excepted from the operation of the section by the words "other than".

The word "process" can include a suit.

A suit for ejectment from a house, on the ground of non-payment of rent and consequent incurment of forfeiture of the lease, is a suit "in respect of" the arrears of rent, within the purview of section 7(1)(*b*) of the Act; and as arrears of rent come within the definition of the word "debt" in the Act, the suit therefore falls within section 7(1)(*b*) of the Act.

Mr. *S. N. Seth,* for the appellant.

Mr. *G. S. Pathak,* for the respondent.

NIAMAT-ULLAH, A.C.J., and VERMA, J.:—This is an appeal by the defendant No. 1 and arises out of a suit which was brought by the plaintiff respondent on the 22nd of August, 1935, for the ejectment of the appellant and his brother, Ram Swarup respondent No. 2, from two houses and for the recovery of a sum of Rs.115 as arrears of rent for four months 18 days, i.e., from the 4th of April, 1935, to the 22nd of August, 1935.

The case of the plaintiff was that he purchased the houses from the defendants by a sale deed dated the 4th of April, 1935, and that the defendants took the houses on rent from him by a "rent agreement" executed by them on the same day, i.e., 4th of April, 1935, that the defendants promised by that agreement to pay him Rs.25 per month as rent and that they had paid nothing on account of rent up to the date on which the suit was brought. The plaintiff further alleged that a term of 6 months had been fixed in the agreement for the tenancy of the defendants but that there was a stipulation in the deed that if the defendants did not pay the rent regularly month by month the plaintiff would be entitled to eject them. He, therefore, pleaded that the defendants having failed to pay the rent, there had been a forfeiture and that he

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was entitled to eject them although the period of six months had not yet expired.

The principal pleas of the defendants were that the sale deed executed by them in favour of the plaintiff on the 4th of April, 1935, was a fictitious transaction and was not intended to convey any title to the plaintiff, that the defendants had submitted an application under section 4 of the U. P. Encumbered Estates Act, that the Collector had passed an order under section 6 of the said Act on the 15th of August, 1935, and that, therefore, the suit was barred by section 10 of the Code of Civil Procedure, and that the notice served on them by the plaintiff was invalid. When the case came up for trial the defendants evidently further urged that the suit was barred by section 7(1)(*b*) of the U. P. Encumbered Estates Act.

The court of first instance repelled the pleas of the defendants and holding that the sale deed of the 4th of April, 1935, was not a fictitious transaction, that the suit was not barred by section 7(1)(*b*) of the U. P Encumbered Estates Act, that it could not be stayed under section 10 of the Code of Civil Procedure and that the notice served by the plaintiff was valid, decreed the suit for ejectment and for the recovery of the arrears of rent claimed.

The defendants appealed to the lower appellate court and repeated the pleas which they had taken in their defence in the trial court. They also complained that the trial court did not give them an opportunity to produce their evidence to prove the fictitious nature of the sale deed executed by them on the 4th of April, 1935. The contention based on section 10 was apparently not pressed.

The learned District Judge held that the defendants were themselves negligent in not being ready with their evidence on the 6th of January, 1936, to which date the case had been postponed and so were not entitled to complain, that due notice had been served on the

defendants by the plaintiff, and that so far as the claim for recovery of the arrears of rent was concerned it was clearly barred under section 7(1)(*b*) of the U. P. Encumbered Estates Act as the definition of "debt" given in the Act was sufficiently wide to include a sum due on account of arrears of house rent, but that the claim for ejectment of the defendants from the house was not so barred. He accordingly allowed the appeal to this extent that he set aside the decree for recovery of the arrears of rent passed by the learned Munsif. He dismissed it so far as it was directed against the decree for ejectment.

The defendant No. 1 has filed this second appeal and has impleaded his brother, Ram Swarup defendant No. 2, as a *pro forma* respondent.

The learned counsel for the appellant has pressed two points before us, (1) that by the learned Munsif's refusal to accede to the request of the defendants made on the 6th of January, 1935, for adjournment of the case they were prevented from producing their evidence to prove the fictitious nature of the sale deed, dated the 4th of April, 1935, and so were treated unjustly, and (2) that the suit for ejectment also should have been held to be barred under section 7(1)(*b*) of the U. P. Encumbered Estates Act.

As to the first point, we agree with the learned District Judge that in view of all the circumstances the appellant was himself to blame and has no right to complain. * * * * We agree with the courts below that there really was no substance in the plea raised by the defendants as to the sale deed being fictitious. We hold that there is no force in this contention of the learned counsel for the appellant.

The second point raised by the learned counsel for the appellant deserves serious consideration and we have heard counsel on both sides at length. The appellant's argument amounts to this that section 7(1)(*b*) of the U. P. Encumbered Estates Act, as amended, should be

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read thus: "No fresh suit or other proceedings (other than an appeal or revision against a decree or order) or a process for ejectment for arrears of rent shall . . be instituted . . . in respect of any debts incurred . . . ." To put it still more clearly, he asks us to read the section thus: "No fresh suit or other proceedings . . . or a process for ejectment for arrears of rent shall . . . be instituted . . . in respect of any debts . . . ." Now, there is no doubt that several criticisms can be levelled against such a reading. Firstly, the words "or other proceedings" having already been used, there was no necessity to say further "or a process for ejectment . . ." Secondly, the word "instituted" does not appear to be a very appropriate expression in connection with "a process for ejectment". Thirdly, ". . . a process for ejectment for arrears of rent . . . *in respect* of *any debts* incurred . . ." sounds odd, to say the least of it. Fourthly, it is not usual to use the word "process" for a suit.

On the other hand, the learned counsel for the plaintiff respondent in effect argues that the sub-section should be read thus: "No fresh suit or other proceedings (other than an appeal or revision against a decree or order, or a process for ejectment for arrears of rent) shall . . . be instituted . . . in respect of any debts . . ." He contends that the comma after the word "order" and before "or a process . . ." should not be taken into consideration and has cited authorities for the proposition that in interpreting statutes it is permissible to disregard punctuation marks. His contention is that the phrase "other than" governs "a process for ejectment" also. Now, sub-section (1)(*a*) of this section provides: "All proceedings pending at the date of the said order . . . except an appeal or revision against a decree or order, shall be stayed . .." Thus the argument put forward on behalf of the plaintiff respondent, if accepted, will lead to the startling result that if a suit for ejectment has been filed before, and is

pending at the date of the order of the Collector under section 6 of the Act, it will have to be stayed but a fresh suit for ejectment filed after, and in spite of the passing of such an order by the Collector, will have to be entertained. The words "all proceedings", in our opinion, are wide enough to include a suit for ejectment.

It seems to us that whichever way the section is read some anomaly or other results. After giving the matter our careful consideration we have come to the conclusion that the interpretation contended for by the learned counsel for the appellant must be accepted as being more in consonance with the intention of the legislature. We are of opinion that too much weight should not be given to arguments based on the inappropriateness of words and phrases occurring in the section. We may further note that one of the meanings of the word "process" which the "New English Dictionary" by Sir James Murray (Oxford, at the Clarendon Press) gives is "suit". According to the "Imperial Dictionary" the word "process" is wide enough to include the whole course of proceedings in a law suit from the original writ (which in India will be the plaint) to the final writ of execution. It seems to be derived from the French word *proces* which means a law suit We are also of the opinion that a suit for ejectment, on the ground that a forfeiture has been incurred by reason of the non-payment of house rent so that the lessor has become entitled to eject his lessee in spite of the fact that the term fixed for the tenancy has not yet expired, is a suit "in respect of" the arrears of rent which must be held to be within the meaning of the word "debt" as defined in the Act.

For the reasons given above we allow this appeal and modifying the decree of the lower appellate court dismiss the plaintiff's suit. In the circumstances of the case we direct that the parties shall bear their own costs throughout