

information before us on the record that while a higher rate of interest than 6 per cent. has been allowed in regard to a number of the debts, in at least three there has been a reduction of the rate of interest from 24 per cent. to 14 per cent.

The learned District Judge in the course of his order has referred to the obstructive and recalcitrant attitude which the appellant has maintained throughout these proceedings. Taking all the facts and circumstances into consideration, though the rate of interest allowed in respect of certain of the debts due may be higher than permitted by the provisions of the Insolvency Act, we do not consider that this is a case in which we should exercise our jurisdiction in revision.

In the result, the appeal is dismissed with costs.

Before Mr. Justice Niamat-ullah and Mr. Justice Allsop

NAND RAM (DEFENDANT) v. SIRAJ HUSAIN KHAN
(PLAINTIFF)*

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September, 8

Landlord and tenant—Lease for building purposes—Presumption—No invariable rule of presumption of permanency, even where lease was prior to Transfer of Property Act—Transfer of Property Act (IV of 1882), section 106—Presumption of terminability of leases given after the Act.

Section 106 of the Transfer of Property Act, 1882, shows that in the case of leases of land, granted for building purposes or otherwise, after the passing of that Act, it lies on the lessee to show that by the terms of the lease he is entitled to occupy the land in perpetuity; otherwise, the section creates a presumption in favour of the lessor that the lease is terminable on six months' or fifteen days' notice as the case may be. The fact that the lessee holds under a building lease will not prevent the presumption arising in favour of the lessor.

As regards cases of leases granted prior to the Transfer of Property Act there is, no doubt, a material distinction, inasmuch as section 106 can not be applied. But even in such

*Second Appeal No. 488 of 1934, from a decree of Muhammad Taqi Khan, First Civil Judge of Meerut, dated the 13th of February, 1934, confirming a decree of H. P. Asthana, Munsif of Meerut, dated the 29th of April, 1933.

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cases, the Privy Council decision in *Afzal-un-nissa v. Abdul Karim* (1) shows that there is no invariable rule that where the land has been let for building purposes or the lessee has erected a substantial building the tenancy must be presumed to be a permanent one; the determination of the nature of the tenancy would rest on evidence direct or inferential.

Mr. N. C. Vaish, for the appellant.

Mr. Panna Lal, for the respondent.

NIAMAT-ULLAH and ALLSOP, JJ.:—This is a defendant's appeal arising out of a suit for ejection. The plaintiff respondent claimed to be the owner of the site of a house which was in possession of the appellant at the time of the institution of the suit. He alleged that the site was originally let to one Abdul Ghani at a monthly rent of 0-2-6 and that one of the terms of the lease was that Abdul Ghani could be ejected on payment by the landlord of the value of the materials of the house which he was entitled to build under the lease. The plaintiff went on to allege that Abdul Ghani continued in possession and that after his death his heirs transferred the materials of the house to one Badlu from whom the same were purchased by the defendant under a deed dated the 17th of June, 1921. The plaintiff gave a notice to quit, but the defendant refused to vacate the site by removing the materials therefrom. The defence was a denial of the plaintiff's right *in toto*.

The lower court has found on the evidence that the plaintiff respondent has satisfactorily established his proprietary right to the site. Another question which the lower appellate court had to consider was whether the defendant and his predecessors were in occupation of the site as plaintiff's tenants. It has again found on evidence that the land was let to Abdul Ghani as alleged by the plaintiff though no written lease is forthcoming. Having arrived at these two findings the lower appellate court addressed itself to the question whether Abdul Ghani and those who stepped into his shoes should be considered to be permanent tenants. It was contended on

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behalf of the defendant that as the origin of the tenancy was admittedly a building lease the court should presume the permanent character of such tenancy. The lower appellate court referred to several circumstances from which it inferred that the tenancy was not permanent. It referred in this connection to the terms of the sale deed in favour of the appellant which purports to be one in respect of the materials of the house. The lower appellate court argued from that fact that the right of occupation of the site has not been transferred and the permanent character of the tenancy is therefore negatived.

In second appeal it is argued by learned counsel for the appellant that there is a presumption that a lease for building purposes is permanent and that such presumption arises in the present case. Reliance is placed upon the decision of a Division Bench of this Court in *Kanhaiya Lal v. Abdullah* (1) in which there is a passing remark to the effect that there is a presumption of law where a permanent building has been erected that the tenancy is permanent. The judgment does not show when the house had been constructed in that case. There was nothing to show that the site had been let for building purposes after the passing of the Transfer of Property Act. We emphasise this fact as, in our opinion, there is a material distinction between cases governed by the Transfer of Property Act and those which are not governed by it. Section 2(c) of the Transfer of Property Act excludes the application of that Act to "any right or liability arising out of a legal relation constituted before this Act comes into force, or any relief in respect of any such right or liability". Section 106 of the Transfer of Property Act lays down that "In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six

(1) L.P.A. No. 5 of 1935, decided on 13th of November, 1935.

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months' notice expiring with the end of a year of the tenancy; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice expiring with the end of a month of the tenancy." The result is that where land was let after the passing of the Transfer of Property Act for building purposes or otherwise it lies on the lessee to show that by the terms of the grant he was entitled to occupy the land in perpetuity. Unless he adduces evidence to rebut the presumption arising under section 106 in favour of the lessor he is bound to be treated as a year to year or a month to month tenant as the case may be. The fact that he holds under a building lease will not prevent the presumption arising in favour of the lessor. It may be that in cases in which substantial buildings have been constructed by the lessee and there is no written lease the burden would be light.

As regards cases not governed by the Transfer of Property Act the rule which has been approved of by their Lordships of the Privy Council in *Afzal-un-nissa v. Abdul Karim* (1) is as follows:

"Although the origin of a tenancy may not be known, yet if there is proved the fact of long possession of the tenure by the tenants and their ancestors, the fact of the landlord having permitted them to build a *pucca* house upon it, the fact of the house having been there for a very considerable time, of it having been added to by successive tenants, and of the tenure having from time to time been transferred by succession and purchase, in which the landlord acquiesced or of which he had knowledge, a court is justified in presuming that the tenure is of a permanent nature."

It will appear that their Lordships do not consider it to be an invariable rule that where land is let for building purposes or the lessee erects a substantial building the tenancy must be presumed to be a permanent one. In the absence of a written lease the determination of the nature of the tenancy rests on evidence direct or otherwise. It may be inferred from circumstances like

(1) (1919) I.L.R. 47 Cal. 1(4).

those mentioned by their Lordships that the tenancy was permanent. On the other hand there may be circumstances which negative such inference.

In the present case the lower appellate court has definitely found that Abdul Ghani constructed the house in question in 1900 long after the passing of the Transfer of Property Act. Accordingly, he should be considered to be holding under a lease from month to month, terminable by fifteen days' notice. The defendant has adduced no evidence to show that the tenancy was permanent. Indeed he denied the plaintiff's right and the fact that Abdul Ghani entered upon the site as a tenant. Apart from section 106 there is a clear indication in the sale deed in favour of the defendant that no more than the materials of the house have been sold to him. Learned counsel has drawn our attention to another recital in the sale deed in which the transferor declares that he has delivered possession of the house to the vendee. As against the clear statement that only the materials have been sold we do not think that a reference to delivery of possession can be construed as showing that the right of occupation was also sold. If materials of a house are sold the only manner in which possession of the property sold can be given is to deliver possession of the house.

For the reasons already stated we uphold the decree appealed from and dismiss the appeal with costs.

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