

to the jury was a good charge. The jury unanimously acquitted Chiraunji Lal. This is a case in which a great deal could be said on both sides. The Sessions Judge's view is a good view and a possible view but we cannot go so far as to say that the Jury's view was a bad view or an impossible view. The case was undoubtedly not free from difficulty and the evidence of the complainant Chhotey Lal was open to considerable criticism. The jury took the view that the evidence was unreliable. We do not say that they were right but we certainly cannot say that they were wrong and in these circumstances we are unable to reverse their verdict. The result is that we acquit Chiraunji Lal and direct him to be set at liberty.

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KING-
EMPEROR
v.
CHIRAUNJI
LAL.

Stuart,
C. J. and
Raza, J.

Reference accepted.

APPELLATE CIVIL.

Before Mr. Justice A. G. P. Pullan.

GOPAL SAHU (DEFENDANT-APPELLANT) v. NAND KUMAR SINGH (PLAINTIFF-RESPONDENT.)*

1930

January, 21.

Occupancy holding—Sale of occupancy holding, if valid—Construction of deeds—Deed purporting to be perpetual lease of occupancy holding—Lessor transferring all his rights without any right of re-entry—Annual rent received equal to land revenue—Deed, whether perpetual lease or sale.

The sale of an occupancy holding is contrary to law and absolutely void and no estoppel arises against a statute. Merely because a document is called a lease or a will, although on its proper construction it appears to be something else, the court is not bound to hold it to be that which it calls itself.

Where a document purports to be a perpetual lease of an occupancy holding transferring all the rights of the occupancy tenant, without any right of re-entry for ever to the lessee, on payment of a sum of money and an annual rent which is

*Second Civil Appeal No. 13 of 1930, against the decree of Babu Sheo Gopal Mathur, Additional Subordinate Judge of Fyzabad, dated the 25th of November, 1929, confirming the decree of M. Muniruddin Ahmad Kirmani, Munsif, in addition to strength at Fyzabad; dated the 25th of September, 1929.

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exactly equivalent to the land revenue due to Government, there is nothing left to the lessor and the transaction is not a lease but a sale. *Mohammad Ishaq and another v. Fahim-un-nissa and another* (1), *Zuifan Khan v. Sant Bulsh Singh* (2), *Lachhman Das v. Bhagwant Ram* (3) and *Karim Dad Khan v. Musammut Bibi Ghafuran* (4), referred to.

Mr. R. D. Sinha, for the appellant.

Mr. Hyder Husain, for the respondent.

PULLAN, J. :—This is the defendant's appeal in a suit brought for possession of an agricultural holding by the heir of a deceased occupancy tenant. The former occupancy tenant was one Himanchal Singh who died in about the year 1925. The plaintiff in this suit who is admittedly his nearest heir attempted to get possession. He at first was successful in his suit brought against the landlords, but he found himself unable to obtain possession against the present appellant who asserted a title by virtue of a registered deed executed in his favour by Himanchal in the year 1915. In the courts below the decision turned upon the interpretation of this deed and plaintiff contended that it was a sale-deed and the defendant that it was a perpetual lease. He relied upon the fact that there was some authority for the view that an occupancy tenant may execute a perpetual lease of his holding and he also set up a case of adverse possession. The findings of the courts below on both points are against him. It was found that on its proper construction the deed was not a lease but a sale-deed and that the defendant had failed to establish the fact that he had been in possession for a period of twelve years.

In this Court a new plea of estoppel is raised and a further plea of limitation which is to some extent a converse of the plea of adverse possession raised by the defendant in the courts below. Apart from the fact that the plea of estoppel was not raised before, it is not a plea which can succeed if the finding of the courts below as to the nature of the deed are correct. The sale of an

(1) (1928) 5 O.W.N., 825.

(2) (1921) 24 O.C., 310.

(3) (1921) 8 O.L.J., 481.

(4) (1921) 9 O.L.J., 104.

occupancy holding is contrary to law and absolutely void and no estoppel arises against a Statute. Moreover the plea appears to be based on a misconception of the rights of the plaintiff. He possessed those rights himself and not through Himanchal Singh who had merely a heritable and non-transferable right in the property during his lifetime. On both these grounds the plea of estoppel cannot be maintained. The new plea of limitation is that the plaintiff had not proved possession within twelve years but the plaintiff had no right of any kind until the death of Himanchal Singh, and as soon as Himanchal Singh died he took every course that was open to him to assert his rights in the holding against the defendant-appellant. He cannot be met by a plea that he is bound by the acquiescence of Himanchal Singh for the period of twelve years in his own illegal transfer.

The main point in dispute, namely whether the deed relied upon by the defendant-appellant is a perpetual lease or a sale-deed has been considered at some length by the courts below. In appeal I have been referred to certain decisions of this Court and of the Judicial Commissioner's Court to the effect that in pre-emption cases the court should accept all documents on their face value and not go into the question of the intention of the parties. That this is an incorrect interpretation is shown by a recent ruling of a Bench of this Court reported in *Mohammad Ishaq and another v. Fahim-un-nissa and another* (1). It was pointed out in that judgment that in the previous decisions referred to no question as regards the admissibility of evidence about the real nature of the transaction was raised, and that there was nothing in those judgments to support the contention that such evidence is inadmissible or that it should be cast aside in determining the nature of the transaction. As observed on page 829 :—

“The position is entirely different in a case in which the parties had really entered into

(1) (1928) 5 O.W.N., 825.

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Pullan, J.

a sale transaction but disguised it under the mask or cloak of a different transaction. In such cases the court must look to the real nature of the transaction for the purpose of determining whether it could be subject to the right of pre-emption or not."

The same principle applies to cases which are not cases of pre-emption, and it has repeatedly been held by this Court that merely because a document is called a lease or a will, although on its proper construction it appears to be something else, the court is not bound to hold it to be that which it calls itself. In the case of a so-called perpetual lease granted by a superior proprietor by which under-proprietary rights were conferred on the lessees, the rent reserved was substantially equivalent to the Government revenue, and no right of re-entry was reserved for the lessor, it was held in the case reported in *Zulfan Khan v. Sant Bakhsh Singh* (1), that the transaction amounted to a sale and a similar view was taken in the cases reported in *Lachhman Das v. Bhagwant Ram* (2) and *Karim Dad Khan v. Musammat Bibi Ghafuran* (3). The present document purports to be a perpetual lease of an occupancy holding transferring all the rights of the occupancy tenant without any right of re-entry for ever to the lessee on payment of a sum of Rs. 350 and an annual rent which is exactly equivalent to the land revenue due to Government. There is, therefore, nothing left to the lessor and the transaction has in my opinion rightly been held by the courts below to be not a lease but a sale. Such a transaction being void it can be challenged by the person who is entitled to the occupancy rights on the death of the transferor and, in my opinion, this suit was decided rightly by the courts below and I dismiss this appeal with costs.

Appeal dismissed.

(1) (1921) 24 O.C., 310.

(2) (1921) 8 O.L.J., 481.

(3) (1921) 9 O.L.J., 104.