

APPELLATE CIVIL.

Before Syed Wazir Hasan, Chief Judge and Mr. Justice
B. S. Kisch.

AMAR NATH SINGH (PLAINTIFF-APPELLANT) v. HAR PRASAD SINGH AND ANOTHER (DEFENDANTS-RESPONDENTS).*

1931

October, 28.

Oudh Rent Act (XXII of 1886), sections 4(1) and 52—Relinquishment by tenant without actual surrender of possession, if effectual—Landlord, whether entitled to eject tenant after such relinquishment—Transfer of Property Act (IV of 1882), section 6(1)—Relinquishment by tenant of his agricultural holding, if amounts to a transfer of his interest.

A relinquishment by a tenant without surrender of possession is ineffectual. So a relinquishment in writing without surrender of possession on the part of a tenant does not constitute a sufficient right in the landlord to recover possession of the plots in question by means of a suit in ejectment. *Musammat Bibi Said-un-nisa v. Faiyaz Hasan (1), Nand Ram v. Chhedi Lal (2), Mendai v. Sajjad Ali (3), and Sristi v. Ramdeo Rai (4)*, relied on. *Binda Prasad v. Rajindra Prasad (5)*, referred to and discussed.

The policy of the Oudh Rent Act, 1886, is to keep the relationship of landlord and tenant subsisting in spite of either or both of them and that it can be terminated only in the manner provided by that Act. Sections 4(1) and 52 of the said Act clearly indicate that an effectual ejectment of a tenant can only take place when the procedure with reference thereto as prescribed by the Act has been adopted and this will be so in spite of any agreement between the landlord and the tenant to the contrary.

A transfer in the form of a relinquishment by a tenant of his agricultural holding is prohibited by section 6(1) of the Transfer of Property Act. The interest of a tenant in the land is no more and no less than a possessory interest and if possession is not delivered it is difficult to characterise such a transfer as a transfer of that interest.

Jang Bahadur v. Rae Raja (6) approved.

*Second Civil Appeal No. 261 of 1930, against the decree of Pandit Damodar Rao Kelkar, Subordinate Judge of Partabgarh, dated the 17th of May, 1930, upholding the decree of Babu Avadh Behari Lal, Munsif, Kunda at Partabgarh, dated the 24th of March, 1930.

(1) (1922) 9 O.L.J., 319.

(2) (1927) 4 O.W.N., 955.

(3) (1929) 6 O.W.N., 1094.

(4) (1919) 4 Revenue Decisions 303.

(5) (1907) 10 O.C., 285.

(6) (1904) 7 Q.C., 265.

1931

AMAR
NATH
SINGH
v.
HAR PRASAD
SINGH.

Mr. *Radha Krishna Srivastava*, for the appellant.

Mr. *Ali Zaheer*, for the respondents.

HASAN, C.J. and KISCH, J.:—This is the plaintiff's appeal from the decree of the Subordinate Judge of Partabgarh, dated the 17th of May, 1930, affirming the decree of the Munsif of Kunda, dated the 24th of March, 1930.

The appeal was in the first instance posted for hearing before our learned brother B.N. SRIVASTAVA, J. He thought that it involved an important question of law which should be decided by a Bench of two Judges. He accordingly made a reference to such a Bench under the provisions of section 14(2) of the Oudh Courts Act, 1925.

The plaintiff's case is that the plots of land nos. 506, 548, 581 and 576, measuring in area 4 bighas 11 biswas and 10 biswansis, situate in the village of Kathbar Parwezpur, pargana Patti, in the district of Partabgarh, were held of him by the defendants in the right of statutory tenants; that under a registered deed of relinquishment dated the 21st of October, 1924, the defendants relinquished their tenancy rights in the plots in suit in favour of the plaintiffs, that on such relinquishment the plaintiff entered into the possession of the plots and that in spite of the relinquishment and the delivery of possession the defendants continued in actual cultivation of the plots of land. Hence this suit with the relief of possession in respect of those plots. It is not necessary for the purposes of this appeal to state in detail the line of defence adopted by the defendants.

The lower appellate court has found that the deed to relinquishment of the 21st of October, 1924, was executed by the defendants and it has further found that the defendants never surrendered possession of the plots in suit in spite of the deed. The court held that the relinquishment was ineffectual in law if there was no surrender of possession accompanying it and as there

was no such surrender in the present case, the plaintiff's suit failed.

In second appeal the only point for decision is as to whether the view of law taken by the lower appellate court, that relinquishment in writing without surrender of possession on the part of a tenant does not constitute a sufficient right in the landlord to recover possession of the plots in question by means of a suit in ejectment, is correct.

So far as the decisions of the late Court of the Judicial Commissioner and of the Chief Court are concerned they all seem to have gone one way in holding that a relinquishment by a tenant without surrender of possession is ineffectual—See *Musammat Bibi Said-un-nisa v. Faiyaz Hasan* (1); *Nand Ram v. Chhedi Lal* (2), and *Mendai v. Sajjad Ali* (3). There is also a decision of the Board of Revenue *Sristi v. Ramdeo Rai* (4), which tends in the same direction. In a case decided by Mr. (afterwards Sir EDWARD) CHAMIER, *Binda Prasad v. Rajindra Prasad* (5), there is a dictum that a tenant may relinquish his tenancy in favour of the landlord "in any manner and at any time by agreement with him". Mr. *Radha Krishna*, counsel for the plaintiff, cites this dictum as an authority in support of the view that a bare agreement between the landlord and the tenant suffices to effectuate a valid relinquishment of tenancy.

We are of opinion that that dictum has not this effect. In that case no question arose of the nature which has arisen in the present case and it was found as a matter of fact that the tenant had surrendered possession of his agricultural holding.

It appears to us that it cannot be doubted that the policy of the Oudh Rent Act, 1886, is to keep the relationship of landlord and tenant subsisting in spite

1931

AMAR
NATH
SINGHv.
HAR PRASAD
SINGHS.Hasan, C.J.
and Kisch,
J.

(1) (1922) 9 O.L.J., 319.

(2) (1927) 4 O.W.N., 955.

(3) (1929) 6 O.W.N., 1094.

(4) (1919) 4 Revenue Decisions,

(5) (1907) 10 O.C., 235

303.

1931

AMAR
NATH
SINGHo.
HAR PRASAD
SINGHS.*Hasan, C.J.
and Kisch,
J.*

of either or both of them and that it can be terminated only in the manner provided by that Act. Section 4(1) of the Act is as follows:—

“Nothing in any contract made between a landlord and a tenant before or after the passing of this Act shall entitle a landlord to eject a tenant or enhance his rent otherwise than in accordance with the provisions of this Act as amended by the Oudh Rent (Amendment) Act, 1921.” Section 52 is as follows:—“No tenant shall be ejected otherwise than in accordance with the provisions of this Act.” These two sections clearly indicate that an effectual ejection of a tenant can only take place when the procedure with reference thereto as prescribed by the Act has been adopted and this will be so in spite of any agreement between the landlord and the tenant to the contrary. Then the Act proceeds to provide remedies both to the tenant and to the landlord for determining the tenancy. Under section 20 a tenant shall continue liable for the rent of his holding unless on or before the fifteenth day of March in any year he gives to the landlord or to the recognised agent of the landlord notice of his desire to relinquish the land and relinquishes it accordingly.” This is the mode of relief granted to the tenant in case he desires to relinquish his holding. It may be emphasised that the section lays down two requisites for such a result to ensue: (1) That the tenant shall give a notice in writing of his desire to relinquish and (2) that he relinquishes it accordingly. It follows that mere expression of the desire to relinquish is not enough even in working out the procedure of relinquishment under the Act. Corresponding to this relief provided in favour of the tenant section 53 gives the landlord right to eject a tenant by notice or by suit as the case may be. If such a notice is served the tenant may either contest it by instituting a suit or may not contest it at all. In the latter case under the provisions of section 59 his tenancy of the land in respect

of which the notice has been served shall cease and section 60 enables a landlord in cases falling under the preceding section to obtain the assistance of court to eject a tenant. All the procedure which a landlord may adopt for the purposes of obtaining the ejectment of a tenant is summed up in clause (4) of section 108, which provides for a suit by a landlord for the ejectment of a tenant.

1931
 AMAR
 NATH
 SINGH
 v.
 HAR PRASAD
 SINGH.
 Hasan, C.J.
 and Kisch,
 J.

It was argued by Mr. *Radha Krishna* that a relinquishment by a tenant of his agricultural holding is a transfer of his interest in the land and may be enforced under the ordinary procedure of law. There are two answers to this argument. One is that such a transfer is prohibited by section 6(i) of the Transfer of Property Act. This was so held by a Bench of the late Court of Judicial Commissioner in *Jang Bahadur v. Rae Raja* (1) and we think, if we may say so, rightly. The second answer is that the interest of a tenant in the land is no more and no less than a possessory interest and if possession is not delivered it is difficult to characterise such a transfer as a transfer of that interest. We are therefore of opinion that the decision of the court below is correct.

The appeal fails and is dismissed with costs.

Appeal dismissed.

(1) (1904) 7 O.C., 265.