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the contrary vide *Gokul Prasad Pathak* v. *Goitri Prasad Singh* (1), and this view is supported by the decision of their Lordships of the Privy Council in *Mathura Das* v. *Raja Narindar Bahadur Pal* (2). We hold therefore that the appellants mortgagees are entitled to recover interest *post diem*.

We allow the appeal with costs and setting aside the decree of the learned District Judge restore that of the trial court.

Appeal allowed.

APPELLATE CIVIL

Before Mr. Justice C. M. King, Chief Judge and Mr. Justice G. H. Thomas

1934 November, 9.

SRIMAN NARAIN SINGH (DEFENDANT-APPELLANT) *v.* RAJA RAJGAN MAHARAJA JAGAT JIT SINGH, PLAINTIFF AND ANOTHER, DEFENDANT (RESPONDENTS)*

*Registration Act (XVI of 1908), section 17(1)(d)—Lease for agricultural purpose of forest land—Period not fixed but annual rent provided—Lease, whether compulsorily registrable—Oudh Rent Act (XXII of 1886), sections 4(3), 36, 37 and 156—No period fixed in an agricultural lease—Lease valid under section 156 without registration—*Nautor *land, lease of—Tenant of Nautor land entitled to privileges of statutory tenant in the absence of a contract to the contrary—Transfer of Property Act, section 107 does not apply to agricultural leases.*

Where a piece of forest land is given on lease for agricultural purposes and though no period is fixed in the lease but an annual rent is provided it shall be taken as a lease from year to year and as a yearly rent is reserved, so under the provisions of section 17(1)(*d*) of the Indian Registration Act the document would be compulsorily registrable.

Section 156 of the Oudh Rent Act modifies the general law of registration in respect of certain classes of documents. Where, therefore, in a patta granted by a landlord to a tenant no term has been fixed for the lease, the document would fall

*First Rent Appeal No. 71 of 1933, against the decree of S. Nazir Husain, Assistant Collector, 1st class, Bahraich, dated the 24th of July, 1933.

(1) (1927) 4 O.W.N., 147. (2) (1896) L.R., 23 I.A., 138.

within the scope of section 156 and would be good and valid without being registered.

Section 4(3) of the Oudh Rent Act means that in the case of *nautor* land the parties can contract themselves out of the provisions of the Act for a period of fourteen years. It does not mean that the rights given to statutory tenants under section 37 do not apply to persons admitted to the occupation of *nautor* land. The effect of section 4(3) is that the rights given to the tenant by section 37 may be nullified or modified by private agreement between him and the landlord during the first fourteen years of his holding the *nautor* land. But in the absence of any such agreement the privileges conferred by the Act upon tenants would operate in *nautor* land just as much as in old cultivation.

Section 107 of the Transfer of Property Act does not apply to leases for agricultural purposes. Where, therefore, such a lease falls under section 156, Oudh Rent Act, registration is not necessary for its validity. *Swami Dayal* v. *Thakur Nabi Bakhsh* (1), relied on.

Mr. *Radha Krishna,* for the appellant.

Messrs. *Ghulam Hasan* and *Iftikhar Husain,* for the respondents.

KING, C. J. and THOMAS, J.:—This is a defendant's appeal arising out of a suit for arrears of rent. The Kapurthala Estate leased an area of forest land, known as Rakhauna Balapur, to the defendants in 1925 for the purpose of cutting down timber. Subsequently by a written agreement or lease (exhibit 3), dated the 7th of January, 1926, the Kapurthala Estate leased the same land to the defendants for agricultural purposes. It was agreed that within the first three years the defendants would be liable to pay rent only in respect of such areas of land as they might actually bring under cultivation, but after three years (which was the period fixed for felling the timber) the defendants would be liable to pay rent at the rate of Re.1-8 per bigha for the whole area, whether it had been brought under cultivation or not.

The Kapurthala Estate brought the suit for arrears of rent for 1336—39 Fasli. One of the main defences was

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that the lease relied upon by the plaintiff (exhibit 3) was inadmissible in evidence as it had not been properly registered and it was compulsorily registerable. It was also argued that in any case the defendants were not liable to pay rent for any part of the area which had not actually been brought under cultivation. The trial court decided the disputed points substantially in the plaintiff's favour and decreed the suit.

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The defendant No. 1 comes to this Court in appeal.

The main question argued in appeal is whether the lease or *ikrarnama* (exhibit 3) is compulsorily registerable.

The document relates to land in the District of Bahraich but it was registered at Gonda and we may take it that the registration was invalid and ineffective. The question however is whether the document was compulsorily registerable.

In our view the document should be regarded as a lease of land for agricultural purposes. No period is fixed, but an annual rent is provided, so the document should be taken as a lease from year to year. A yearly rent has also been reserved, so under the provisions of section 17(1)(*d*) of the Indian Registration Act the document would be compulsorily registerable. This view was taken by another Bench of this Court in Second Rent Appeal No. 50 of 1933, decided on the 27th of September, 1934. That was another rent suit between the same parties and the document in question in that case was very similar to the document in question in the present case. The learned Judges held that in so far as the document provided for the eventuality of the lessee cultivating the land under the trees it purported to create and declare a right or interest in immovable property within the meaning of section 17(1)(*b*) of the Indian Registration Act, and as it has not been registered at the proper registration office it was inadmissible in evidence under section 49 of the Act. We are in agreement wtih the learned Judges who decided the case if

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the terms of the Indian Registration Act only were to be taken into consideration, as the document must be held to fall within the scope of section 17(1)(*b*) or 17(1)(*d*), but the question before us is whether section 156 of the Oudh Rent Act does not apply so as to make the document valid and admissible in evidence without registration. The learned Judges who decided the previous suit mentioned above did not take into consideration this section of the Oudh Rent Act which modifies the general law of registration in respect of certain classes of documents.

In our opinion section 156 of the Act applies to the facts of this case. The section lays down:

"Notwithstanding anything contained in the Indian Registration Act, 1877, pattas granted for any term not exceeding ten years by landlords to statutory tenants shall be deemed good and valid without their being registered."

The document in question must, we think, be held to be a *patta* granted by a landlord to a tenant and as no term has been fixed for the lease, the document would *prima facie* appear to fall within the scope of the section and to be good and valid without being registered. It has however been contended that the defendants cannot be held to be "statutory" tenants and therefore the provisions of section 156 do not apply to the lease granted to them.

The land which was leased to the defendants was land which had not previously been cultivated and was in fact forest land. Stress has been laid upon the provisions of section 4, sub-section (3) of the Oudh Rent Act with reference to land of this sort, which is commonly known as *nautor* land. It is enacted that "where land not previously cultivated has been or is hereafter let by a landlord to a tenant. . . for the purpose of being reclaimed by the tenant, nothing in the section shall be construed to affect the conditions of any contract relating to that land until fourteen years have

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elapsed from the date on which the land was first brought under cultivation." This means that in the case of *nautor* land the parties can contract themselves out of the provisions of the Act for a period of fourteen years. It does not mean that the rights given to statutory tenants under section 37 do not apply to persons admitted to the occupation of *nautor* land. The effect of section 4(3) is that the rights given to the tenant by section 37 may be nullified or modified by private agreement between him and the landlord during the first fourteen years of his holding the *nautor* land. For instance, the parties might agree that the tenant would be liable to ejectment after a term of seven years, or that the rent would be liable to enhancement by the landlord after a term of five years. But in the absence of any such agreement the privileges conferred by the Act upon tenants would operate in *nautor* land just as much as in old cultivation. This view is supported by the authority of the case *Swami Dayal* v. *Thakur Nabi Bakhsh* (1), in which the Board of Revenue held that the holder of a clearing cultivating lease for an unspecified term was an ordinary statutory tenant under section 36 or 37 of the Act and that section 4(3) did not lay down any rule debarring tenants of newly cultivated land from obtaining statutory privileges in it for a period of fourteen years. In our opinion that case was correctly decided and the defendants in the present case must be held to be statutory tenants. On this view it is clear that the provisions of section 156 of the Oudh Rent Act are applicable to the document exhibit 3 and it must be deemed good and valid without being registered.

It has been argued for the appellant that exhibit 3 is not properly speaking a "lease" but it is only an agreement to give a lease. The argument is that during the first three years the defendants are not liable to pay rent for any part of the land unless they actually bring it

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under cultivation. So they do not become tenants except in so far as they exercise their right of cultivating the land. This contention does not appeal to us. We think that the document must be regarded as a lease of land for agricultural purposes. It is clearly provided that after the period fixed for cutting (three years) the defendants would be liable to pay rent at the specified rate for the whole area whether they actually cultivate it or not. It was only during the first three years that a concession was made in the matter of rent, as the defendants were not liable during the first three years to pay rent for any area not actually brought under cultivation. We do not think that this agreement regarding rent differentiates the transaction from a lease even in respect of the first three years, but it was certainly a lease of the whole area from 1336 Fasli onwards.

Section 107 of the Transfer of Property Act has also been relied upon for the argument that even if the terms of the Indian Registration Act are to be disregarded (in view of section 156 of the Oudh Rent Act) nevertheless the document in question will not be valid as a lease without being registered. There is no force in this contention as the Transfer of Property Act itself clearly lays down in section 117 that its provisions do not apply to leases for agricultural purposes except in so far as the local Government may declare them to be applicable. It is not suggested that any such declaration has been made.

Holding that the lease (exhibit 3) is admissible in evidence, we need not consider the question what would be the fair and equitable rate of rent. According to the lease the stipulated rate of rent was Re.1-8 per bigha and the defendants are bound by the terms of the lease. We may however point out that the defendants actually paid rent at this rate for the year 1336 Fasli and they also agreed, as shown by the *fard nilam*, to pay at that rate at the time when the forest was auctioned.

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On the question whether the defendants have proved the supply of certain bundles of wire to the plaintiff, in part payment of rent, we agree to the finding of the trial court.

In view of our findings the appeal must fail and we accordingly dismiss it with costs.

Appeal dismissed.

MISCELLANEOUS CIVIL

Before Mr. Justice E. M. Nanavutty and Mr. Justice G. H. Thomas

1934 *November*, 16.

RAM CHARAN SAHU (JUDGMENT-DEBTOR-APPELLANT) *v.* JAMNA PRASAD (DECREE-HOLDER-RESPONDENT)*

Civil Procedure Code (Act V of 1908), sections 141 and 151—Misdescription of property in plaint and decree—Court's power to correct the mistake.

Where by a mistake of the plaintiff the property in suit is wrongly described in the plaint and the preliminary and final decrees, the court has power to correct the mistake by amending the plaint and the decree. *Aziz Ullah Khan* v. *Court of Wards, Shahjahanpur* (1), and *Shiam Lal* v. *Moona Kuar* (2), referred to.

Mr. Bhawani Shankar, for the appellant.

Mr. *Hyder Husain,* for the respondent.

NANAVUTTY and THOMAS, JJ.:—This is a judgment-debtor's appeal against an order of the learned Subordinate Judge of Bahraich refusing to set aside certain *ex parte* proceedings. It is made under Order IX, rule 13 and sections 141 and 151 of the Code of Civil Procedure.

The facts out of which this appeal arises are briefly as follows:

The appellant Ram Charan mortgaged five villages under a mortgage deed, dated the 1st of January, 1916, to one Ranjit Khan. The names of these five villages as entered in the mortgage deed are as follows:

*Miscellaneous Appeal No. 36 of 1933, against the order of Pandit Ganja Shankar Misra, Subordinate Judge of Bahraich, dated the 20th of May, 1933.

(1) (1932) 30 A.L.J., 784. (2) (1933) 11 O.W.N., 550.