

## APPELLATE CIVIL

Before Mr. Justice G. M. King, Chief Judge and Mr. Justice  
Ziaul Hasan

ANGNOO (DEFENDANT-APPELLANT) v. BABU MOHAN LAL  
(PLAINTIFF-RESPONDENT)\*

1935  
April 17

*Oudh Rent Act (XXII of 1886), sections 3(10) and 19A—Remission of rent of tenants by Government—Thekadar of zamindari property, whether entitled to reduction of theka money—Contract Act (IX of 1872), section 56, applicability of.*

The provisions of the Oudh Rent Act relating to the remission of rent are not intended to apply to the case of lessees of zamindari property. Such lessee is, therefore, not entitled to a reduction in the *theka* money in proportion to the reduction made by Government in the rent payable by the tenants. Section 56 of the Indian Contract Act is also inapplicable to such a case. *Horlock v. Beal* (1), distinguished. *Ram Narain v. Hon'ble Uday Pratap Adiadat Singh* (2), referred to and relied on.

Messrs. *R. B. Lal* and *Suraj Sahai*, for the appellant.

Messrs. *Rajeshwari Prasad* and *Ramapat Ram*, for the respondent.

KING, C.J. and ZIAUL HASAN, J.:—This is an appeal under section 12(2) of the Oudh Courts Act against the judgment of Mr. Justice SRIVASTAVA and arises out of a suit brought in the Revenue Court by the respondent for recovery of *theka* money.

The appellant on the 29th of July, 1930, obtained a lease of some zamindari property from the respondent for the years 1338 to 1344 F. The *theka* money was to be paid to the zamindar in four instalments every year. Two of the instalments were due in November and December each year and the suit of the plaintiff-respondent was for recovery of the instalments that fell due in November and December, 1931.

\*Section 12(2) Appeal No. 5 of 1934, against the decree of Mr. Justice Bisheshwar Nath Srivastava, Judge of the Chief Court of Oudh, dated the 21st of March, 1934, modifying the decree of Mr. H. J. Collister, I.C.S., District Judge of Lucknow, dated the 24th of September, 1932.

(1) (1916) L.R., 1 A.C., 486.

(2) (1910) 13 O.C., 146.

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One of the defences put forward in the suit was that the lessee was entitled to a reduction in the *theka* money in proportion to the reduction made by Government in the rent payable by the tenants. This plea found favour with the trial Court which reduced the rent claimed to the extent of five annas in the rupee according to the remission made in the rent of the tenants by Government. The plaintiff zemindar appealed to the District Judge who held that the lessee was not entitled to any reduction in the *theka* money fixed by the contract between the parties. He accordingly allowed the appeal and decreed the plaintiff's suit for the amount claimed. Against this decision the defendant filed an appeal in this Court but it was dismissed and the learned District Judge's order upheld. It is against the judgment of this Court that this appeal has been brought.

We are clearly of opinion that there is no force in this appeal. So far as the provisions of the Oudh Rent Act are concerned, sections 19 and 19A of the Act read with section 3(10) leave no room for doubt that the provisions relating to the remission of rent were not intended to apply to the case of lessees of zemindari property. This was not in fact disputed. Reliance was however placed on section 56 of the Indian Contract Act but that section also is manifestly inapplicable. The second clause of that section which is relied upon runs thus—

“A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful becomes void when the act becomes impossible or unlawful.”

It is clear that under this clause a contract to do an act which becomes impossible or unlawful becomes void. The contract which the appellant is seeking to avoid under this clause of section 56 is his contract to pay Rs.465 a year as *theka* money to the zemindar but it is conceded that it cannot be said that the pay-

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ment of the *theka* money by the appellant has become impossible or unlawful. In our opinion section 56 of the Indian Contract Act does not help the appellant.

Reliance was also placed by the learned Advocate for the appellant on *Horlock v. Beal* (1), but that case is distinguishable from the present case inasmuch as in the present case we have a distinct contract on behalf of the appellant to pay the annual *theka* money in any event and irrespective of all calamities, whether earthly or heavenly. In the case of *Ram Narain v. Hon'ble Uday Pratap Adiadat Singh* (2) which was a case very similar to the present case, it was held that a lessee of a zemindar was not entitled to remission of the lease money under the provisions of the Oudh Rent Act and that his liability was to be determined by the terms of the contract entered into by him.

In the present case the lessee bound himself to pay the lease money in any event to the zemindar and he is in our opinion liable to pay the amount claimed without any reduction on account of a remission of the tenants' rents. It was urged that the contract was to pay the lease money irrespective of "calamities of every kind" but that the reduction of rent by Government could not be said to be a calamity of the kind contemplated. We do not however agree with this. The rent of the tenants was presumably remitted under section 19A of the Oudh Rent Act and that section itself shows that remission of rent is made by reason of an agricultural calamity. Moreover, so far as the rights of the zemindar are concerned, the remission of rent can be regarded as an earthly calamity.

The appeal, therefore, fails and is dismissed with costs.

*Appeal dismissed.*

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