

APPELLATE CIVIL.

Before Mr. Justice Gokaran Nath Misra.

GAURI SHANKAR, LALA (PLAINTIFF-APPELLANT) v.
NIZAMUDDIN KHAN AND ANOTHER (DEFENDANTS-
RESPONDENTS).*

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Landlord and tenant—Ejectment of tenant—Tenant's right in trees planted by him after his ejectment from the holding—Right of tenants other than grove-holders in trees planted by them.

The ejectment of a tenant from his holding extinguishes his rights in the trees which he had planted in it during the continuance of his tenancy.

Where certain persons were not in possession of certain plots as grove-holders but were in possession as tenants and planted trees thereon during their tenancy, they had no right to mortgage those trees but they had only a right to enjoy the produce of the trees as long as they were in possession of the plots as tenants but could not have a right of possession over the trees after the ejectment. *Chandi Singh v. Syed Arjumand* (1), followed.

Mr. *Mukund Behari Lal*, for the appellant.

Messrs. *Zahur Ahmad* and *Zaibul Hasan*, for the respondents.

MISRA, J. :—This appeal arises out of a suit brought by the plaintiff-appellant against the defendants-respondents to recover Rs. 150 by way of damages on account of the cutting down of the trees standing on plots nos. 196, 197 and 198, situate in village Karoni, pargana Bijnor, district Lucknow. The plaintiff alleged that Chokhey, Nohri, Bhikhari and Dayal, sons of one Nanda, were originally the owners of the groves standing on these plots, and that they had mortgaged them to Ganga

*Second Civil Appeal No. 219 of 1927, against the decree of Surendra Vikram Singh, Subordinate Judge of Lucknow, dated the 14th of March, 1927, reversing the decree of Harcharan Dayal, Munsif of Haveli, Lucknow, dated the 28th of October, 1926, decreeing the plaintiff's claim.

(1) (1899) 2 O.C., 261.

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Ghulam and Ganga Bishan under two usufructuary mortgage deeds, dated the 20th of January, 1900, and the 8th of August, 1910, respectively. It was further alleged that the plaintiff had obtained a transfer of the mortgage rights from these persons by means of a sale-deed, dated the 4th of December, 1916, and that he had been in possession since that date of the groves in suit as a mortgagee. It was further alleged that the defendant No. 1 had illegally cut *dhak* trees from the said groves, on account of which they were entitled to damages amounting to Rs. 150. Defendant No. 2 was the zamindar of the village; and defendant No. 1 was his *ziladar* (collecting agent) acting on his behalf. It was for this reason that he was also impleaded as a defendant in the suit.

It was contended by the defendants that Chokhey, Nohri, Bhikhari and Dayal were not the owners of the groves in suit, and that they had no right to mortgage the trees standing on the said plots.

It was further contended that the persons mentioned above were merely in occupation of the plots in suit as tenants having planted the trees during their tenancy, and that Nohri, the survivor of them, was ejected in execution of a decree from the Rent Court in the year 1923, the effect of which was that whatever rights he had in the trees were lost to him on his ejection; and that the plaintiff also lost all his rights as mortgagee on the extinction of the rights possessed by Nohri.

The learned Munsif of Haveli, Lucknow, who tried the suit, found that Chokhey and his brothers were the owners of the groves in suit and had a right to mortgage the trees; and that the ejection of Nohri, the survivor of them, from the plots in suit, did not affect the rights of the plaintiff to the trees as a mortgagee of the said groves. On these findings he passed a decree for damages to the extent of Rs. 15 in favour of the plaintiff.

On appeal, the learned Additional Subordinate Judge of Lucknow took a different view. On a consideration of the entire evidence on the record he came to the conclusion that Nohri and his brothers were not in occupation of the plots in suit as grove-holders, but were in possession as tenants paying rent for the same and had planted trees on those plots while in occupation thereof as tenants. In this view of the case he held that Nohri and his brothers had no right to mortgage the trees, and that the decree for ejection passed against Nohri was, therefore, binding upon the plaintiff. He, therefore, decreed the appeal and dismissed the plaintiff's suit.

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In second appeal, it is contended before me that the decision of the learned Subordinate Judge is erroneous. It is again contended that Nohri and his brothers were in occupation of the plots in suit as grove-holders and had a right to transfer the trees standing on those plots and, therefore, the plaintiff as a mortgagee from them was entitled to remain in possession of the trees, and the defendants were not entitled to cut them down.

It appears to me that the finding of the learned Subordinate Judge is binding upon me as a court of second appeal. I have gone through the entire evidence on the record, and I am of opinion that the finding is correct. Nohri and his brothers were not in possession of these plots as grove-holders but had planted the trees thereon during their tenancy. That being the case, it appears to me to be clear that they had no right to mortgage the trees. They had only a right to enjoy the produce of the trees as long as they were in possession of these plots as tenants but could not have a right of possession over the trees after the ejection. I am supported in this view by a decision of a Bench of the late Court of the Judicial Commissioner of Oudh in the

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case of *Chandi Singh v. Syed Arjumand Ali* (1). It was held in that case that the ejection of a tenant from his holding extinguished his right in the trees which had been planted in it during the continuance of the tenancy. The question has been exhaustively dealt with by Mr. SPANKIE, A.J.C., in that judgment, and I am in entire agreement with the view of law taken by him in that case. I, therefore, hold that the mortgages executed by Nohri and his brothers ceased to have any effect in law after the ejection of Nohri from the plots in suit; and the plaintiff has no right to retain the possession over the trees after the ejection of the surviving mortgagor.

I, therefore, dismiss this appeal with costs.

Appeal dismissed.

APPELLATE CIVIL.

*Before Sir Louis Stuart, Knight, Chief Judge, and
Mr. Justice Muhammad Raza.*

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FIRM DANAJI JASRAJ (DEFENDANT-APPELLANT) v. FIRM PURAN LAL GOBIND PRASAD (PLAINTIFF-RESPONDENT).*

Jurisdiction—Fraud upon a court—Ex parte decree obtained by fraud in an outside court—Execution of decree in Oudh Court—Declaratory suit in Oudh Court that decree was null and void—Suit, whether entertainable by Oudh Court.

Where the defendants filed a suit in a court outside Oudh and in the plaint there was a wilful misstatement and suppression of material facts by the defendants and they deliberately misdescribed the plaintiffs in order to prevent their being in a position to defend the case, and thus obtain an *ex parte* decree, and an attempt was made to execute that

*Second Civil Appeal No. 194 of 1927, against the decree of Fateh Bahadur Verma, District Judge of Hardoi, dated the 3rd of March, 1927, dismissing the appellant's appeal.

(1) (1899) 2 O.C., 281.