

APPELLATE CIVIL

Before Mr. Justice Bisheshwar Nath Srivastava, Chief Judge

LALA SHYAM SUNDAR LAL (PLAINTIFF-APPELLANT) v.
CHHOTAY LAL (DEFENDANT-RESPONDENT)*

1936
August 13

Transfer of Property Act (IV of 1882), section 107—Lease for collection of rent and not for cultivation—Lessee not a party to the lease—Lease, whether one for agricultural purposes and subject to section 107, Transfer of Property Act.

A lease executed mainly with the object of making an arrangement for collection of rents and not with the object of cultivation cannot be regarded as an agricultural lease and is, therefore, subject to the provisions of section 107, Transfer of Property Act and is invalid if the lessee is not a party to it. *Jang Bahadur Singh v. Ehsan Ali* (1), *Ballabh Das v. Murat Narain Singh* (2), and *Satya Nirnanjan Chakravarty v. Surajbala Debi* (3) relied on.

Mr. *Hyder Husain*, for the appellant.

Mr. *K. N. Tandon*, for the respondent.

SRIVASTAVA, C.J.:—The admitted facts of the case are that defendants 2 and 3 were the mortgagees in possession of certain zamindari shares belonging to defendant No. 1. On the 13th of October, 1930, defendants 2 and 3 executed a lease (exhibit 1) in respect of the entire mortgaged share in favour of defendant No. 1 for 1338 and 1339 Fasli reserving an annual rent of Rs.200 out of which a sum of Rs.46 was to be paid by the thekedar towards the Government revenue. On the 10th of May, 1933, defendants 2 and 3 made an assignment of their right of realising the arrears of rent under the aforesaid theka to the plaintiff. The plaintiff brought the present suit for recovery of the arrears of rent on the basis of the assignment just mentioned. His claim was decreed in part by the trial court but

*Second Civil Appeal No. 5 of 1935, against the decree of Sh. Ali Hammad, Subordinate Judge of Hardoi, dated the 20th of September, 1934, setting aside the decree of Babu Tribeni Prasad, Munsif, South, Hardoi, dated the 11th of December, 1933.

(1) (1900) 5 O.C., 222.

(2) (1926) I.L.R., 48 All., 385.

(3) (1930) P.C., 13.

has been dismissed *in toto* against the defendant No. 1 by the lower appellate court on the ground that the lease (exhibit 1) is invalid inasmuch as the lessee was no party to it as required by section 107 of the Transfer of Property Act.

The only contention urged in support of the appeal is that section 107 did not apply to the lease (exhibit 1) because it was an agricultural lease to which the provisions of Chapter V of the Transfer of Property Act did not apply. I have examined the lease and I am satisfied that the main object of it is to provide for the collection of rents by the thekedar. It has been pointed out that under section 3, clause (10) of the Oudh Rent Act the word "tenant" includes a thekedar for the purpose of section 108 of the Oudh Rent Act and it is argued that if a suit for arrears of rent could be brought against a thekedar to whom the collection of rents has been leased by the landlord under section 108 of the Oudh Rent Act the lease should be deemed to be a lease for agricultural purposes. I do not feel impressed by the argument. The question is not about the application of section 108 of the Oudh Rent Act but about the application of section 107 of the Transfer of Property Act. The last mentioned section is applicable to all leases except leases for agricultural purposes which have been exempted under section 117 of the Transfer of Property Act. In order to determine whether a lease is or is not a lease for agricultural purposes so as to be exempt from the application of the provisions of Chapter V of the Transfer of Property Act we have to examine the terms of the lease and determine its object. Looked at from this standpoint I have no doubt that it was executed mainly with the object of making an arrangement for collection of rents and not with the object of cultivation. In *Jang Bahadur Singh v. Ehsan Ali* (1) in the case of a similar theka which was an oral one it

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was held that the lease being one of the right to receive the collections of a village was not a lease for agricultural purposes within the meaning of section 117 of the Transfer of Property Act. Similarly in *Ballabh Das v. Murat Narain Singh* (1) where it was found that the primary object of the lease was not cultivation it was held that it was not a lease for agricultural purposes so as to be brought within the exception made in section 117 of the Transfer of Property Act. In *Raja Satya Niranjan Chakravarty v. Surajbala Debi* (2) their Lordships of the Privy Council held that a tenancy for the purpose of realisation of rent from the cultivating tenants is governed by the provisions of the Transfer of Property Act.

The authorities cited above fully support the view that the lease (exhibit 1) cannot be regarded as an agricultural lease and is therefore subject to the provisions of section 107 of the Transfer of Property Act. The result therefore is that the decision of the lower appellate court is correct and must be upheld.

I accordingly dismiss the appeal with costs.

Appeal dismissed.

APPELLATE CIVIL

*Before Mr. Justice Bisheshwar Nath Srivastava, Chief Judge
and Mr. Justice H. G. Smith*

GUR DIN SAH (PLAINTIFF-APPELLANT) v. BADRI AND OTHERS
(DEFENDANTS-RESPONDENTS)*

1936
September 2

*Transfer of Property Act (IV of 1882), section 106—Lease—
Lessee not admitted to tenancy of existing shops but allowed
to build new shops on the ruins of old ones—Nazrana and
monthly rent charged—Shops constructed and occupied for
over thirty years without any attempt by lessor to enhance*

*Second Civil Appeal No. 390 of 1934, against the decree of Pandit Dwarka Prasad Shukla, Additional Subordinate Judge of Unao, dated the 31st of October, 1934, reversing the decree of Pandit Hari Shankar Chaturvedi, Munsif of Unao, dated the 28th of April, 1934.

(1) (1926) I.L.R., 48 All., 385.

(2) (1930) P.C., 13.