

the actual damage which he can prove that he has sustained. In either case not only is the bond a contract of a different form and nature from a covenant with a penal clause, but the remedy upon it, and the amount recoverable for the breach of it, is also different."

In the present case the executant Sundar Lal did not undertake any obligation to pay any money to Thakur Gandharp Singh. The only reference to payment of money contained in the instrument is the reference for payment of the price of the sugarcane juice by Gandharp Singh to Sundar Lal. No doubt Sunder Lal undertook the obligation of supplying sugarcane juice on the terms stated in the document. The provision as regards his liability for damages in case of a breach of agreement and the other terms of the document show that the document is rather in the nature of an agreement than a bond. We are accordingly of opinion that the stamp duty and the penalty realised by the Munsif was sufficient.

We answer the reference accordingly.

APPELLATE CIVIL

Before Mr. Justice E. M. Nanavutty

PANDIT HAR NARAIN (DEFENDANT-APPELLANT) *v.* PANDIT
SIDH NATH (PLAINTIFF-RESPONDENT)*

1936
March, 10

Transfer of Property Act (IV of 1882), section 51, Scope of—Permanent lease—Lessee not excluded from benefit of section—Lessee making improvements on land in good faith—Lessee, whether can believe himself to be owner and entitled to compensation—Phrase "believing in good faith that he is absolutely entitled", meaning of.

There is no valid reason for excluding a permanent lessee from the benefit of section 51, Transfer of Property Act. So long as he pays the rent due on his lease, the lessee can consider himself to be the absolute owner of the land perpetually leased to him, and he can honestly believe that he is the owner

*Second Civil Appeal No. 207 of 1934, against the decree of Saiyid Shaukat Husain, Subordinate Judge of Unao, dated the 28th of February, 1934, upholding the decree of Babu Gopal Chandra Sinha, Munsif, North, Unao, dated the 14th of September, 1933.

1936
SUNDAR
LAL
v.
THAKUR
GANDHARP
SINGH

*Srivastava
and
Nanavutty,
J.J.*

1936 of the land, erect constructions upon it and thereby improve the value of the land. Where, therefore, such a lessee constructs a house in good faith upon the land duly leased to him, he is in equity entitled to compensation for the improvements made by him. *Rudra Partab Sahi v. Debi Pershad* (1), and *Venkataraman v. Pannusami Padayachi* (2), followed. *Rajrup Kunwar v. Gopi* (3), dissented from.

PANDIT
HAR NARAIN
v.
PANDIT
SIDH NATH

Section 51, Transfer of Property Act, is founded upon the principle that he who will have equity must do equity. The phrase "believing in good faith that he is absolutely entitled" implies that the transferee must not be aware of any circumstances which would render invalid his transfer. The phrase "good faith" ordinarily implies an honest belief in one's right. The transferee must not be a trespasser or a qualified holder.

Messrs. *Hyder Husain* and *Siraj Husain*, for the appellants.

Mr. *L. S. Misra*, for the respondent.

NANAVUTTY, J.:—This is a defendant's appeal against an appellate judgment and decree of the learned Subordinate Judge of Unao upholding the judgment and decree of the learned Munsif of North Unao.

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

On the 9th of June, 1916, Pandit Baldeo Behari, a vakil of Unao, along with Babu Lachhmi Narain, vakil, took a lease of 3 bighas and 4 biswas of land on a rental of Rs.112. The lease provided *inter alia* that the land could not be sublet to others without the permission of the landlords, Munshi Yakub Husain and Musammat Wajahat Fatima. In 1927 Pandit Baldeo Behari died leaving a widow Musammat Mohini and a minor son, Pandit Sidh Nath the plaintiff in the present suit. On the 24th of June, 1931, Musammat Mohini, acting as guardian of her minor son Sidh Nath, granted a perpetual lease to defendant Har Narain of 4 biswas and 2 biswansis forming part of her garden and *sahan darwaza* on a rental of Re.1 per annum. By this lease of the 24th of June, 1931, no right to eject the lessee was

(1) (1901) 8 O.C., 13.

(2) (1927) A.L.R., Mad., 1023.

(3) (1925) I.L.R., 47 All., 430.

reserved and no right to enhance rent was granted. If the rent of Re.1 a year was not paid, only the right to sue for arrears was given. The land was leased for the purpose of constructing a house. In December, 1932, the defendant Pandit Har Narain started erecting a house. In February, 1933, a registered notice was given by the minor Sidh Nath through his brother-in-law Dwarka Nath asking the defendant to refrain from putting up a construction. The notice was returned unserved as the addressee refused to take it. On the 3rd of March, 1933, Pandit Sidh Nath brought the present suit, and an application for an injunction was made by the plaintiff and a temporary injunction was granted. The trial Court decreed the plaintiff's suit *in toto* for removal of the building and for possession over the land, holding that Musammat Mohini was a *pardanashin* lady, who did not fully understand the transaction into which she had entered with the defendant, and that the defendant had exercised undue influence over her, and that the lease in question was for inadequate consideration and conferred no benefit on the minor, Pandit Sidh Nath. The defendant appealed to the Court of the Subordinate Judge of Unao and in appeal the lower appellate Court held that the lease was executed by Musammat Mohini under the spell of the defendant, but that she executed it intelligently. It further held that the lease was not for adequate consideration and conferred no benefit upon the minor, and no acquiescence could avail against the minor and so dismissed the appeal of the defendant. The defendant thereupon came up to this Court in second appeal and when this second appeal came up for hearing in this Court, a learned Judge of this Court, on the 5th of August, 1935, remitted an issue for trial to the lower appellate Court under Order XLI, rule 25 of the Code of Civil Procedure. The issue was as follows:

"Having regard to the provisions of section 51 of the Transfer of Property Act, is the defendant entitled to

1936

PANDIT
HAR NARAIN
v.
PANDIT
SIDH NATH

Nanavaty,
J.

1936

PANDIT
HAR NARAIN
v.
PANDIT
SIDH NATH

Naravuttiy,
J.

any compensation from the plaintiff, and, if so, to what amount is he entitled?"

The learned Subordinate Judge of Unao (not the same Officer who decided the appeal of the defendant) held that the defendant was entitled to compensation under the provisions of section 51 of the Transfer of Property Act and he fixed the amount of compensation to which the defendant was entitled from the plaintiff at the sum of Rs.1,136-3-9, and he submitted his finding to this Court. The plaintiff-respondent filed objections to the remand finding.

I have heard the learned counsel of both parties at considerable length and I have taken time to consider the question of law involved in this appeal.

Section 51 of the Transfer of Property Act runs as follows:

"When the transferee of immovable property makes any improvement on the property, believing in good faith that he is absolutely entitled thereto, and he is subsequently evicted therefrom by any person having a better title, the transferee has a right to require the person causing the eviction either to have the value of the improvement estimated and paid or secured to the transferee, or to sell his interest in the property to the transferee at the then market-value thereof irrespective of the value of such improvement."

The learned counsel for the plaintiff-respondent has argued that the scope of this section is limited, and that since it refers to a transferee, who in good faith believes himself to be absolutely entitled, it excludes lessees and mortgagees and therefore the appellant Pandit Har Narain, who is only a lessee, is excluded from the benefit of this section, and in support of his contention he has cited a Full Bench ruling of the Allahabad High Court reported in *Rajrup Kunwar v. Gopi and others* (1), in which it was held that a person, who took what purported to be a permanent lease from a Hindu widow and made improvements on the property, was not entitled to compensation for the improvements made when on the death

of the widow he was evicted by the reversioner. On the other hand the learned counsel for the appellant has relied upon a ruling of the late Court of the Judicial Commissioner of Oudh reported in *Raja Rudra Partab Sahi v. Debi Pershad and another* (1). In this case Mr. Spankie, Additional Judicial Commissioner, made the following observation :

"There is a strong presumption that the lessee believed in good faith that under the lease he was absolutely entitled to the land subject to the payment of rent, arising from the terms of the lease itself. The defendants, as the heirs of the lessee and claiming under the lease, are therefore entitled to the value of any improvements made by the lessee, which is what they ask for in case they are liable to be evicted from the land."

The same view was taken by a learned Judge of the Madras High Court in *Venkataraman v. Pannusami Padayachi and another* (2), in which it was held that a person, who had incurred expenses for the purpose of raising a plantation, was in equity entitled to be reimbursed the amount spent by him. Sir Dinshaw Mulla in his well known Commentary on the Transfer of Property Act (1933 Edition, page 188) has expressed his opinion that a lessee cannot appeal to this section 51 even if he is a permanent lessee and that a mortgagee cannot be said to believe himself to be "absolutely entitled" and is therefore outside the scope of this section. It seems to me that there is no valid reason for excluding the lessee from the benefit of this section. So long as he pays the rent due on his lease, the lessee can certainly consider himself to be the absolute owner of the land perpetually leased to him and he can honestly believe that he is the owner of the land, erect constructions upon it, and thereby improve the value of the land. As pointed out by Mr. Spankie in the ruling reported in *Raja Rudra Partab Sahi v. Debi Pershad* (1) cited above the lessee can honestly believe in good faith that he is

1936

 PANDIT
 HAR NARAIN
 v.
 PANDIT
 SIDDH NATH

Nanavaty,
 J.

(1) (1901) 8 O.C., 13 (20).

(2) (1927) A.I.R., Mad., 1023.

1936
 PANDIT
 HAR NARAIN
 v.
 PANDIT
 SIDH NATH

Nanavutti,
 J.

absolutely entitled to the land leased to him subject to the payment of rent. Section 51 of the Transfer of Property Act is founded upon the well-known principle that he who will have equity must do equity. The phrase "believing in good faith that he is absolutely entitled" occurring in section 51 of the Transfer of Property Act seems to me to imply that the transferee must not be aware of any circumstances which render invalid his transfer. The phrase "good faith" ordinarily implies an honest belief in one's right. The transferee must not be a trespasser or a qualified holder. It has been argued on behalf of the plaintiff-respondent that in view of the finding of the lower appellate Court that the defendant-appellant exercised a spell upon the plaintiff's mother and that the lease was without adequate consideration and not for the benefit of the minor and in view of the fact that no evidence concerning acquiescence can avail against the minor, the defendant should not be held entitled to the benefit of section 51 of the Transfer of Property Act. The considerations pointed out by the learned counsel for the plaintiff-respondent no doubt render the lease invalid, but they do not affect the right of the appellant to recover compensation for the house constructed by him in good faith upon the land which had been duly leased to him.

In my opinion, after giving the facts of this case my very best consideration, the appellant is in equity entitled to the compensation claimed by him. I accordingly allow this appeal, modify the decree of the lower Court and give the plaintiff a decree for possession of the land by ejectment of the defendant on condition that the plaintiff pays to the defendant-appellant the sum of Rs.1,136-3-9 as compensation. In the circumstances of this case, each party will bear its own costs in this Court. The order of the lower appellate Court as to costs will stand good. To this extent this appeal is allowed.

Appeal partly allowed.