

meaning of the definition contained in the Agriculturists' Relief Act. The learned counsel for the opposite party has also referred to the provisions of section 142 of the Land Revenue Act, and argued that the trustees are under no personal liability for the payment of the Government revenue. Assuming this to be so, it cannot affect their position as persons paying the requisite amount of land revenue, and as such entitled to be regarded as agriculturists for the purpose of the Agriculturists' Relief Act. We are therefore of opinion that the interpretation placed by the learned Civil Judge is not correct, and that persons in the position of trustees must be regarded as agriculturists within the meaning of the definition contained in section 2(2) of the United Provinces Agriculturists' Relief Act. We accordingly answer the question referred to the Full Bench in the affirmative.

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BABU
BHAWANI
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v.
MUSAMMAT
KHURSHED
JAHAN

*Srivastava,
C.J. and
Ziaul Hasan
and Smith,
J.J.*

REVISIONAL CIVIL.

*Before Mr. Justice G. H. Thomas and Mr. Justice
Ziaul Hasan*

ABDUL KARIM (DEFENDANT-APPLICANT) v. SHEIKH DUBAR
(PLAINTIFF-OPPOSITE PARTY)*

1937
May, 6

Contract Act (IX of 1872), section 27—Section 27, if contemplates not only total but also partial restraint—Agreement requiring defendant to sell hide only to plaintiff and to nobody else—Contract, if in partial restraint of trade and void.

Section 27 of the Indian Contract Act contemplates not only a total but a partial restraint also.

Where, therefore, the terms of a contract require the defendants to sell hides *only* to the plaintiff and to nobody else, the contract is in partial restraint of trade and as such void under section 27 of the Contract Act.

*Section 25 Application No. 45 of 1936, against the decree of Babu Badri Prasad Tandon, Munsif of Fatehpur at Bara Banki, dated the 30th of January, 1936.

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DUBAR

Carlises, Nephews & Co. v. Ricknauth Bucktearmull (1), *Sadagopa Ramanjiah v. Mackenzie* (2), *Shaikh Kalu v. Ram Saran Bhagat* (3), *Har Bilas v. Mahadeo Prasad* (4), and *Cohen, E. M. D. v. Allan Wilkie* (5), referred to.

Mr. *Ganesh Prasad*, for the applicant.

THOMAS and ZIAUL HASAN, JJ.:—These are two applications under section 25 of the Small Cause Courts Act against two decrees passed by the learned Judge, Small Cause Court, Fatehpur at Bara Banki, in favour of Sheikh Dubar, the opposite-party in both these applications.

The opposite-party is a wholesale dealer in hides while the two applicants are retail dealers. The two suits which have given rise to these applications were brought by Sheikh Dubar against the present applicants respectively for recovery of damages on the basis of a contract. It was alleged that each of the defendants entered into a contract with the plaintiff for sale of hides to him on the following terms:

(1) That on every Sunday morning when a market is held at Zaidpur, the defendants would sell all the hides purchased by them on that date to the plaintiff at a rate given out by him.

(2) That if the plaintiff should fail to purchase all the hides from the defendants, he would be liable to pay damages to the defendants at the rate of Rs.4 per maund.

(3) If the defendants should refuse to sell the hides purchased on that date by them to the plaintiff, they would be liable to pay damages at the same rate.

(4) The agreement was to last for three years.

It was on account of an alleged breach of this contract that Rs.27 were claimed as damages from Mulhay, applicant in application No. 46 of 1936, and Rs.55 from Abdul Karim, applicant in application No. 45 of 1936.

(1) (1882) I.L.R., 8 Cal., 809.

(2) (1891) I.L.R., 15 Mad., 79.

(3) (1909) 13 C.W.N., 388.

(4) (1931) All., 579

(5) (1912) 14 I.C., 215.

The defendants denied the contract set up by the plaintiff and also pleaded that the contract was void under section 27 of the Indian Contract Act. The learned Judge of the court below decided both these points against the defendants and decreed the plaintiff's suits.

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It is contended before us that the court below was in error in holding that the alleged contract was not void under section 27 of the Indian Contract Act. We are of opinion that this contention is well-founded. The first paragraph of section 27 of the Indian Contract Act runs as follows:

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J.J.*

“Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.”

It is manifest and is not disputed that the term of the contract in question requiring the defendants to sell hides only to the plaintiff and to nobody else was a partial restraint on the defendants' exercise of their trade and we think that section 27 contemplates not only a total but a partial restraint also. We are supported in this view by the case of *Shaikh Kalu v. Ram Saran Bhagat* (1) in which it was held that under section 27 of the Contract Act where the restraint is general or partial, unqualified or qualified, if it is in the nature of a restraint of trade, it is void. A similar view was taken in *Har Bilas v. Mahadeo Prasad* (2). In *E. M. D. Cohen v. Allan Wilkie* (3) which is also a Calcutta case, the plaintiff engaged the defendant and his theatrical company to come out to India for a certain tour. By one of the clauses of the agreement the defendant undertook not to play at any other theatre in Calcutta or in any other town until after the termination of the tour. It was held that the clause is void under section 27 of the Contract Act as being in restraint of trade.

(1) (1909) 13 C.W.N., 388.

(2) (1931) All., 539.

(3) (1912) 14 I.C., 215.

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The learned Judge of the court below has relied on the case of *Carlises, Nephews & Co. v. Ricknauth Bucktearmull* (1). This case no doubt supports the view taken by the court below but the view taken in it was not adopted by the Calcutta High Court in the two later cases referred to above.

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JJ.

The learned Judge of the court below has also relied on *Sadagopa Hamanjiah v. Mackenzie* (2). In that case a contract to the effect that all salt manufactured by the defendant should be sold to the plaintiff firm for a fixed price was no doubt held not to be invalid under section 27 of the Contract Act but with the greatest respect we are unable to agree with the view taken. The learned Judges say:

“The agreement, it is to be observed, is only void in so far as it restrains any one from exercising his trade.” In the present case the breach complained of was that the defendant sold to third persons the salt manufactured by him, which he ought to have delivered to the plaintiffs. It is an ordinary case of a breach of contract to manufacture and sell goods, and it cannot possibly be said that by such a contract the manufacturer is restrained from exercising his trade. On the contrary he is encouraged to exercise it because he is assured of a certain market for the products of his labour.”

We do not see how it can be said that the case of an agreement not to sell salt to persons other than the plaintiff can be said to be “an ordinary case of a breach of contract to manufacture and sell goods.” To our mind the fact that the defendant is not only required to supply salt to the plaintiff but is also restrained from supplying it to others takes the case out of the category of ordinary cases of breach of contract to sell goods.

We are of opinion that the contract in question was in partial restraint of trade and as such void under section 27 of the Contract Act.

(1) (1882) I.L.R., 8 Cal., 809.

(2) (1891) I.L.R., 15 Mad., 79.

The applications are therefore allowed and the plaintiff-opposite party's suits against the applicants dismissed with costs. *Ex parte* costs will be allowed in this Court as the opposite-party put in no appearance.

Application allowed.

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ABDUL
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APPELLATE CIVIL

*Before Mr. Justice G. H. Thomas and Mr. Justice
Ziaul Hasan*

KUNWAR MAN SINGH (PLAINTIFF-APPELLANT) v. BINDESH-
WARI BAKHSH SINGH AND OTHERS (DEFENDANTS-RES-
PONDENTS)*

1937
May, 7

*Under-proprietary rights—Construction of documents—Com-
promise or agreement conferring heritable non-transferable
rights—Settlement decree passed on basis of compromise—
Condition in restraint of alienation in settlement decree,
validity of—Qabiz-darmiani, meaning of.*

Where a compromise or agreement, on the basis of which a settlement decree is passed confers heritable but non-transferable under-proprietary rights upon a person, the deed of compromise or agreement can only be interpreted as conferring upon the person absolute under-proprietary rights in the village in question. The condition in restraint of alienation even although it is contained in a settlement decree is null and void and in spite of the insertion of such addition such a decree conveys an absolute right of transfer. *Case law discussed.*

The word "*Qabiz-darmiani*" means an under-proprietor in the sense in which it is used in the Oudh Rent Act (XIX of 1868 and XXII of 1886).

Messrs. *Hyder Husain, P. N. Chaudhri, Girja Shankar* and *H. H. Zaidi*, for the appellant.

Mr. *L. S. Misra* for Mr. *Radha Krishna Srivastava*, for the respondents.

THOMAS and ZIAUL HASAN, JJ.:—This is a plaintiff's appeal against the judgment and decree of the learned

*First Civil Appeal No. 53 of 1935, against the decree of Sufiyid Abid Raza, Civil Judge of Partabgarh, dated the 28th of February, 1935.