

dated the 17th of July, 1927. The proposed amendment would not make any change in the cause of action. All that the proposed amendment is intended to do is to include the whole claim arising out of the cause of action based on the bond in suit. We accordingly accede to the request of the plaintiff's counsel, and setting aside the decree of the lower court send the case back to that court for being tried afresh, after allowing the plaintiff to amend the plaint on the lines stated above. The question of limitation arising out of the amendment, as well as that raised with regard to the original claim, will also be decided afresh. The plaintiff will pay all the costs of the defendants incurred in this Court, but the costs in the lower court will abide the result.

1937

RAGHUNATH  
PRASAD  
v  
MUSANMAT  
PRANA

Srivastava,  
C. J. and  
Smith, J.

*Application remanded.*

### APPELLATE CIVIL

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

1937  
January, 6

S. ALTAF HUSAIN AND ANOTHER (DEFENDANTS-APPELLANTS)  
v. S. AKHTAR HUSAIN, (PLAINTIFF-RESPONDENT)

*Oudh Rent Act (XXII or 1886) as amended by Act IV of 1921,  
section 19A—Thekadar, whether a tenant for purposes of  
section 19A.*

A *thekadar* cannot be regarded as a tenant for the purpose of section 19A of the Oudh Rent Act. There is no reason for section 19A not having been added at the time of the amendment of section 3(10) by Act IV of 1921 if it was intended that a *thekadar* should be regarded as a tenant for the purpose of that section. *Agno v. Mohan Lal* (1), relied on. *Parbati Kunwar v. Deputy Commissioner of Kheri* (2), distinguished.

Messrs. *Ishwari Prasad* and *K. N. Tandon*, for the appellants.

\*Second Rent Appeal No. 6 of 1935, against the decree of Pandit Tika Ram Misra, District Judge of Hardoi, dated the 14th of November, 1934, confirming the decree of Pandit Chaudhri Ram Chander, Assistant Collector, 1st class, Hardoi, dated the 8th of November, 1933.

(1) (1934) I.L.R., 10 Luck., 357. (2) (1918) L.R., 45 I.A., 111.

1927

S. ALTAF  
HUSAIN  
v.  
S. AKHTAR  
HUSAIN

SRIVASTAVA, C. J. and SMITH, J.:—This is an appeal by the defendants, who are thekadars, arising out of a suit for arrears of *theka* money for the years 1333 to 1340 Fasli. The appellants claimed certain remission in the rent under section 19A of the Oudh Rent Act. The learned District Judge, relying on the decision by one of us in *Angno v. Mohan Lal*, (1), held that the appellants under the terms of their *theka* having bound themselves to pay the arrears of rent irrespective of anything in the nature of any earthly or heavenly calamity, were not entitled to any remission of rent. The learned counsel for the appellants has questioned the correctness of this decision, and has argued that the definition of "tenant" contained in section 3, clause 10, of the Oudh Rent Act must be regarded as applicable only to the provisions which existed in the Oudh Rent Act when it was originally passed in 1886, and has no application to section 19-A, which was inserted by the amending Act IV of 1921. In support of this argument he has relied on the decision of their Lordships of the Judicial Committee in *Parbati Kunwar v. Deputy Commissioner of Kheri* (2). In this case the question was regarding the application of the provisions of Chapter VII-A which was added to the Act by the amending Act of 1901, to *thekadars*. In this case their Lordships observed as follows:

"Section 3, clause (10) which contains that definition was part of Act XXII of 1886 as it was passed in 1886. Chapter VII-A, which deals with the resumption and the enhancement of the rent of land held rent-free or at a favourable rate of rent and contains section 107-A to section 107-K, was added to Act XXII of 1886 in 1901 by an amending Act, United Provinces.

Act IV of 1901, and consequently the specific enactments of Chapter VII-A are not limited in their application by section 3(10) which must be regarded as a mere glossary defining the terms 'tenant' and 'thekadar' as those terms are employed in the Act XXII of 1886 as it stood in 1886 when it was passed."

(1) (1934) I.L.R., 10 Luck., 357.

(2) (1918) L.R., 45 I.A., 111.

This decision is binding on us, and entitled to our greatest respect so far as it goes. We are, however, of opinion that the principle enunciated in this case has no application to the case before us inasmuch as we find that section 19-A was inserted in the Oudh Rent Act of 1886 by Act IV of 1921. Section 3 of the same Act made certain amendments in the definition of "tenant" as contained in section 3(10) of Act XXII of 1886. Sections 12-A, 30-A, 32-A and 32-B, which were enacted by Act IV of 1921, were added to the list of sections in which the expression "tenant" was to include a *thekadar*. In other words, the effect of the amendment made in section 3(10) by Act IV of 1921 was that the expression "tenant" as used in some of the new sections enacted by Act IV of 1921 was to include a *thekadar*. We can think of no reason for section 19-A also not having been added at the time of this amendment if it was intended that a *thekadar* should be regarded as a tenant for the purpose of that section. We have therefore no doubt that the amended section 3(10) as it stands now should be regarded as a glossary defining the terms "tenant" and *thekadar* as those terms are employed not only in Act XXII of 1886 when it was passed, but also in the provisions inserted in the Act of 1886 by the amending Act IV of 1921. We can therefore see no reason to overrule the decision in *Agno v. Mohan Lal* (1). The result therefore is that the appeal fails and is dismissed. As the respondent is present in person, and has incurred no costs, we make no order in respect of costs.

*Appeal dismissed.*

(1) (1934) I.L.R., 10 Luck.. 357.

1937

S. ALTAF  
HUSAIN  
c.  
S. ABHTAR  
HUSAIN

Srinastava,  
C. J. and  
Smith, J.