however arise as the plaintiff's claim must fail on our finding that there was no contract between him and respondent no. 1.

The result is that we agree with the learned Judge of the court below on his findings on issues 1 to 3 and dismiss this appeal with costs.

Appeal dismissed.

APPELLATE CIVIL

Before Mr. Justice Ziaul Hasan and Mr. Justice Radha Krishna Srivastava

RAJA SRI AMAR KRISHNA NARAIN SINGH (PLAINTIFF-APPELLANT) *v.* WARIS HUSAIN AND OTHERS (DEFENDANTS-RESPONDENTS)*

Lease—Lease executed in settlement of dispute about proprietary title—Words "perpetual" and "for ever" used in the lease—Lease whether conferred heritable and transferable rights—Interpretation of documents—Oudh Rent Act (XXII of 1886), section 3(8)—Under-proprietor, definition of—Perpetual lessee with heritable and transferable rights, whether an under-proprietor—Transfer of Property Act (IV of 1882), section 111(g)(2)—Lessee setting up higher rights under the lease than those admitted by lessor, whether amounts to disclaimer of landlords' title—Section 111(g)(2), applicability of—Legal practitioner—Counsel's authority to admit documents.

A counsel appearing in a case from the very nature of his duties and for the purpose of a proper conduct of the case must be deemed to have implied authority to admit or deny a document, to press or withdraw an issue in the case, to examine a witness or call no witnesses and do such other acts which are required for the proper management and conduct of the trial. *Rajah Muhammad Mumtaz Ali Khan* v. *Sheorattanjir* (1), and *Ram Autar and others* v. *Raja Muhammad Mumtaz Ali Khan* (2), distinguished. *Sheonandan Prasad Singh* v. *Hakim Abdul Fateh Mohammad Reza* (3), relied on.

A perpetual lessee holding land with heritable and transferable rights is an under-proprietor within the definition of that term in the Oudh Rent Act.

*First Civil Appeal No. 47 of 1936, against the decree of Pradyuman Kishen Kaul, Esq., Subordinate Judge of Barabanki, dated the 6th February, 1936.

(1) (1896) L.R., 23 I.A., 75. (2) (1897) L.R., 24 I.A., 107.
(3) (1935) L.R., 62 I.A., p. 196.

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Where there is nothing in a lease which may show that the interest conveyed was sought to be limited in its scope and the lease was executed in settlement of a dispute relating to proprietary title, it is a very strong circumstance in favour of holding that the transferor intended to transfer all his interest in the property, i.e. a heritable and transferable estate The words "perpetual" and "for ever" are words of flexible amplitude, and if the circumstance under which the instrument is made and the subsequent conduct of parties show an intention with clearness and certainty that a heritable and transferable grant was made, then it is open to the court to give that meaning to these words, and the words "for ever" in the lease stand for the words "from generation to generation". *Rajah Rameshwar Bakhsh Singh* v. *Arjun Singh* (1), *Aziz un-nissa* v. *Tasadduk Husain Khan* (2), *Nand Ram* v. *Amanat Fatima Begam* (3), *Muhammad Abdul Karim Khan* v. *Niwaz Singh* (4) and *Hira Lal and others* v. *Gajraj Kuer and others* (5), distinguished. *Thakur Harihar Baksh* v. *Thakur Uman Parshad* (6) and *Sheo Bahadur Singh* v. *Bishunath Saran Singh* (7), relied on.

If a lessee sets up higher rights under the lease than what the lessor accepts were granted to him, there is no disclaimer of the title of the landlord, for instance, setting up permanent rights of tenancy is not the denial of the proprietary rights of the lessor. An assertion by a lessee that the lease conferred not only heritable but transferable rights as well does not amount to the denial of the title of the landlord or claiming the title for themselves and does not fall within the language of section 111(*g*)(2), of the Transfer of Property Act. *Baba* v. *Vishvanath Joshi* (8) *Mahipat Rane and others* v. *Lakshman and others* (9) and *Kally Dass Ahiri* v. *Manmohini Dassee* (10), distinguished. *Kali Krishna Tagore* v. *Golam Ally* (11), *Kemalooti* v. *Muhamed* (12) and *Maharaja of Jeypore* v. *Rukmini Pattamahevi* (13), relied on; and *Vithu* v. *Dhondi* (14), *Kali Krishna Tagore* v. *Fuzle Ali Chowdhry* (15), *Bengal-Nagpur Railway Company, Limited* v. *Firm Bal Mukunda Biseswar Lall* (16) and *Faithful Croft* v. *Benjamin Lumley* (17), referred to.

Messrs. *P. L. Banerji, H. Husain, Durga Dayal* and *H. H. Zaidi*, for the appellants.

(1) (1900) L.R., 28 I.A., 1.
(2) (1901) L.R., 28 I.A., p. 65.
(3) (1903) 6 O.C., p. 94.
(4) (1909) 12 O.C., 267.
(5) (1936) I.L.R., Luck., 203.
(6) (1886) L.R., 14 I.A., 7.
(7) (1927) 4 O.W.N., p. 15.
(8) (1883) I.L.R., 8 Bom., 228.
(9) (1900) I.L.R., 24 Bom., 426.
(10) (1897 I.L.R., 24 Cal., 440.
(11) (1886) I.L.R., 13 Cal., 248.
(12) (1917) I.L.R., 41 Mad., 629.
(13) (1919) L.R., 46 I.A., 109.
(14) (1890) I.L.R., 15 Bom., 407.
(15) (1883) I.L.R., 9 Cal., 843.
(16) (1923) A.I.R., Cal., 663.
(17) 6 H.L.C., 672.

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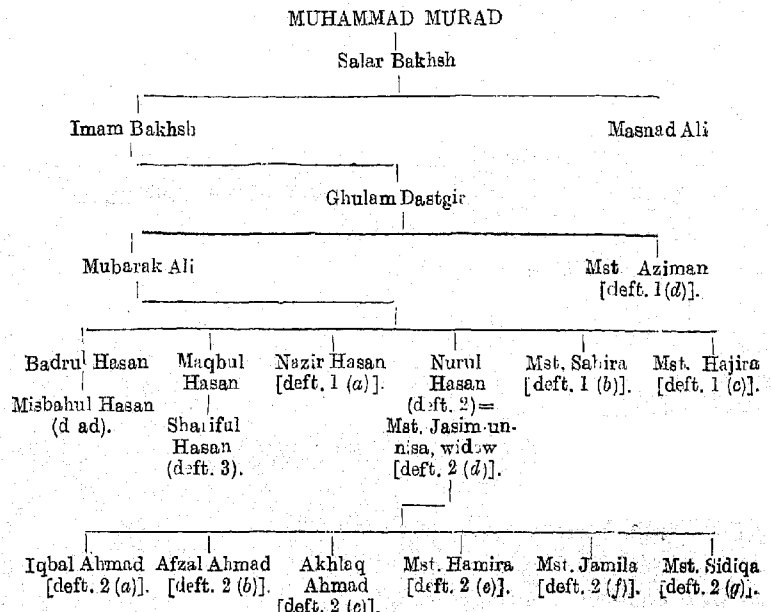
Messrs. *M. Wasim, Nawab Ali,* and *Ali Hasan,* for the respondents Nos. 1, 2, 3, 5 to 8 and 12.

ZIAUL HASAN and RADHA KRISHNA, JJ.:—This is a plaintiff's appeal arising out of a suit for possession. The property in suit consists of a village called Chak Rahramau, which forms part of taluqa Ramnagar Dhameri in the district of Bara Banki, of which the plaintiff-appellant is the present holder.

Ziaul Hasan and Radhe Krishna, JJ.

The suit as originally filed was against three defendants, i.e. Mubarak Ali, Nurul Hasan and Shariful Hasan. During the pendency of the suit Mubarak Ali and Nurul Hasan, defendants nos. 1 and 2, died and defendants nos. 1(*a*) to 1(*d*) and defendants nos. 2(*a*) to 2(*g*) were brought on the record as their legal representatives respectively. A pedigree of the family of the defendants may be given here for a proper appreciation of the facts necessary for the decision of this case. This pedigree may be taken as admitted between the parties inasmuch as the portion from Ghulam Dastgir downwards was admitted on behalf of the plaintiff in oral pleadings and no part of it has been questioned before us in appeal:



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Ziaul Hasan and Radha Krishna, JJ.

In 1858 Raja Sarabjit Singh, the predecessor-in-title of the plaintiff and the original taluqdar of the taluqa Ramnagar Dhameri, and Ghulam Dastgir were both rival claimants for the settlement of the village in dispute at the time of the second summary settlement. On the 4th December, 1858, the Raja is said to have written a letter to Ghulam Dastgir (Exhibit A-6) referring to the cordial relations that had subsisted between them and also to the fact that other persons were likely to put forward claims to the chak and promising to give him a lease of the entire *chak* for ever in case Ghulam Dastgir made efforts so as to bring about the settlement of the *chak* with the Raja. Ghulam Dastgir on the 23rd December, 1858, filed an application, which is included in the summary settlement file of the village, claiming settlement of the *chak* in his favour on the basis of his ancestral rights. After statements had been made by one Jawahir Karinda on behalf of the Raja and by Ghulam Dastgir, to which reference will be made later on, the application of Ghulam Dastgir was consigned to records, and settlement of the village was made with the Raja, who executed a *qabuliat* and an agreement in respect of it in favour of the Government on the same date (*vide* Exhibits A-117 and A-118).

The defendants' case is that soon after the Raja in fulfilment of his promise made earlier executed a perpetual lease in favour of Ghulam Dastgir on the 11th March, 1859, conferring upon him heritable and transferable rights in the village. The plaintiff's case, on the other hand, as disclosed in the oral pleadings, is that the village was granted by the Raja orally to Ghulam Dastgir as an ordinary *thekadar* on payment of an annual rent but he was unable to give its date.

Ghulam Dastgir died in 1875 and was succeeded by his son Mubarak Ali. The Raja's estate came under the superintendence of the Court of Wards in 1888 and soon after a dispute arose between Mubarak Ali and the Court of Wards in respect of the village in suit. The Deputy Commissioner took possession of the *chak* excepting the *sir* plots by force and served a notice

upon him for his ejectment from the *sir* plots. Mubarak Ali filed a suit under section 9 of the Specific Relief Act for possession of the village, excepting the *sir* plots, and obtained a decree on the 31st January, 1890, and successfully contested the notice of ejectment issued by the Court of Wards with the result that he was restored into the possession of the entire *chak* Rahramau. The Court of Wards then on the 8th August, 1893, instituted a suit for possession of the village against Mubarak Ali in the Court of the Subordinate Judge of Bara Banki. The trial court held that the plaintiff had treated the defendant as a tenant and was not entitled to a decree for possession but it decreed the suit declaring that the defendant had no right to hold the *chak* Rahramau after his father's death. In appeal the late Court of the Judicial Commissioner of Oudh allowed the appeal and dismissed the suit in its entirety. This judgment of the Judicial Commissioner's Court is Exhibit A-25 and will have to be referred to again later. During the pendency of the above-mentioned suit the Court of Wards sued Mubarak Ali for arrears of rent also.

On the 1st January, 1923, Mubarak Ali made an oral gift of the *chak* in dispute in favour of Nurul Hasan, the predecessor-in-interest of respondents nos. 2(*a*) to 2(*g*), and Shariful Hasan, defendant no. 3, and it was followed by the delivery of possession in favour of the donees. The village in question was entered in the name of Mubarak Ali as a *pukhtadar* and so on mutation being allowed the donees were also entered as *pukhtadars* of the village. In the year following Mubarak Ali filed a suit for a declaration that the gift by him in favour of Nurul Hasan and Shariful Hasan was fictitious. Nurul Hasan and Shariful Hasan confessed judgment and a decree as prayed by Mubarak Ali was passed in the suit. During the pendency of this suit the donees had applied in the Revenue Court for correction of papers on the ground that they should be entered as under-proprietors and not as *pukhtadars*. This application was opposed on behalf of the taluqdar

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and the proceedings ultimately terminated by the order of the Board of Revenue, dated the 11th November, 1925, which held that the transfer by Mubarak Ali in favour of Nurul Hasan and Shariful Hasan was invalid in law and directed the name of Mubarak Ali to be entered as holding under a heritable but non-transferable lease (*vide* Exhibit A-79). On appeal by the taluqdar from this order of the Board of Revenue their Lordships of the Privy Council held that he had no right to appeal to His Majesty in Council and dismissed the appeal (*vide* Exhibit 10).

The plaintiff filed the present suit against Mubarak Ali, Nurul Hasan and Shariful Hasan as stated above for possession of village Chak Rahramau, and, in the alternative, prayed for a declaratory decree against the defendants, to the effect that the defendant no. 1, had no transferable rights in the village. The suit was contested by defendants nos. 2 and 3 of whom defendant no. 2 is represented now by defendants 2(*a*) to 2(*g*) as stated above.

The learned Civil Judge of Bara Banki framed necessary issues and dismissed the suit. The main findings arrived at by him may be mentioned here:

(1) That the defendants' claim that they are under-proprietors was not made out but it was proved that their predecessor-in-interest Ghulam Dastgir held the village with heritable and transferable rights under the *patta*, dated the 11th March, 1859.

(2) That Shaikh Mubarak Ali made an oral gift of the village in favour of Nurul Hasan and Shariful Hasan on 1st January, 1923, and put the donees in possession of it.

(3) That this gift did not result in an abandonment of Mubarak Ali's interest in the village and the plaintiff did not acquire a right of re-entry.

(4) That the plaintiff was estopped by the judgment of the Judicial Commissioner's Court, dated the 18th August, 1898, between the parties from

contesting the following points by virtue of section 11 of the Code of Civil Procedure:

(*a*) That Raja Sarabjit Singh granted Chak Rahramau to Ghulam Dastgir by a *patta*, dated the 11th March, 1859.

(*b*) That the original of the aforesaid *patta* was lost and the secondary evidence thereof tendered in that case was admissible and duly proved.

(*c*) That the *patta* conferred heritable rights in Chak Rahramau on Ghulam Dastgir.

(5) That the suit of the plaintiff for the relief for possession was within time but the relief for a declaration was barred by time.

It may be mentioned here that the finding No. (2) by the learned Civil Judge was not questioned before us by the learned Counsel appearing on behalf of the respondents.

The points argued by the learned Counsel for the appellant before us are:

(I) That the judgment of the Judicial Commissioner's Court, dated the 18th August, 1898, referred to above did not operate as *res judicata* in respect of the points mentioned by the learned Civil Judge in his finding No. 4 noted above.

(II) That the lease set up by the respondents, dated the 11th March, 1859, is not genuine and they are not entitled to adduce secondary evidence thereof.

(III) That the said lease, if proved, enured for the lifetime of Ghulam Dastgir and no more and did not confer upon him either heritable or transferable rights.

(IV) That even if the rights under the lease were heritable an absolute transfer by the gift by Mubarak Ali in favour of Nurul Hasan and Shariful Hasan resulted in an abandonment of his interest in the village and the plaintiff became entitled to re-entry and take possession of it.

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(V) That none of the reliefs claimed was barred by time.

We now proceed to consider each of the points mentioned above in the order in which they are noted.

(I) Res judicata

Ziaul Hasan and Radha Krishna, JJ.

As stated above in the narration of facts the Deputy Commissioner of Bara Banki as Manager of the Court of Wards in charge of the Ramnagar Estate brought a suit on the 8th August, 1893, against Mubarak Ali for possession of Chak Rahramau on the allegation that his father Ghulam Dastgir was a mere *thekadar* and on his death Mubarak Ali acquired no rights in the village. Mubarak Ali in defence relied upon the written lease, dated the 11th March, 1859, which he alleged was granted to his father Ghulam Dastgir by Raja Sarabjit Singh, the then taluqdar. The defendant further averred that the original *patta* had been lost and relied upon a copy thereof. On the basis of this *patta* Mubarak Ali claimed that permanent and heritable rights were conferred upon Ghulam Dastgir. The issues that arose between the parties were whether the defendant had made out a case for the reception of secondary evidence of the *patta*, whether the lease relied upon by the defendant was proved and whether it conferred a heritable estate upon the lessee. These issues were directly and substantially in issue in the former suit which was between the parties under whom the present parties claim. They were litigating under the same title and the former court was quite competent to try the present suit. The issues in question were finally decided between the parties. There can, therefore, be no doubt that section 11 is fully applicable and it is not open to the plaintiff to raise the same points in the present suit, but an escape from the application of the rule of *res judicata* is sought on the ground that in view of certain admissions made by Mr. Cockerell, the learned Counsel for the Court of Wards, in appeal the decree of the late Court of the Judicial Commissioner of Oudh must be treated to be

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a consent decree and before such a decree can be given effect to, it must be established that the consent to that decree had been given by a person having authority to give that consent. Reliance in support of this contention was placed on two decisions of their Lordships of the Privy Council in *Rajah Muhammad Mumtaz Ali Khan* v. *Sheorattanjir and another* (1) and *Ram Autar and others* v. *Raja Muhammad Mumtaz Ali Khan* (2). In our opinion this contention has no force for two reasons. In the first place, the decree of the Judicial Commissioner's Court cannot be characterised as a decree on the consent or admission of claim and secondly the action of Mr. Cockerell in admitting certain documents in appeal before the Judicial Commissioner's Court was an action within his authority as a counsel for his client in the case. From a perusal of Exhibit A-25, the judgment of the Judicial Commissioner's Court, it would appear that Mr. Cockerell admitted Exhibits B-7, B-10, B-18, B-19, B-20, B-22 and B-25 of that case. Out of these documents the learned Judicial Commissioners relied upon Exhibits B-7, B-10 and B-25, the other documents were not referred to at all in the judgment. Exhibits B-7, B-10 and B-25 of that case are the same as Exhibits A-6, A-11 and A-16 respectively of this case. These are the letters of the Raja, dated the 4th December, 1858, 1st March, 1859, and 10th January, 1865, respectively. Their genuineness was very probable in view of the admitted fact that Ghulam Dastgir had been in possession of the village since long before 1858 and his claim to the sub-settlement had been withdrawn on the assurance on behalf of the Raja that if he withdrew his claim he would be granted a perpetual lease of the village at a proper *jama* and "shall uphold the same from generation to generation" (*vide* the statement of the *karinda*, Exhibit A-8). Mr. Cockerell did not admit the copy of the lease, dated the 11th March, 1859, relied upon on behalf of the defendants. The question of the genuineness of the lease was strenuously argued by him in the

(1) (1896) L.R., 23 I.A., 75. (2) (1897) L.R., 24 I.A., 107.

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light of all the facts and full reliance was placed on all the circumstances and evidence negativing its existence. The admission of the three documents mentioned above was not an admission of the claim of the defendant in that case and would not convert the decree passed on contest into a decree of consent. It passes our comprehension how a judgment such as passed by the Judicial Commissioners can be called a judgment on consent.

Ziaul Hasan and Radha Krishna, JJ.

Rajah Muhammad Mumtaz Ali Khan v. *Sheorattanjir* (1) was a case in which one Thakur Parshad as an agent of the Court of Wards had made a verbal admission of the claim of the opposite side and got the decree for sub-settlement passed in favour of the opposite-party in the Settlement Court. The taluqdar on attaining majority filed a suit to recover possession of the property in respect of which the decree for sub-settlement had been passed by the Settlement Court and the defendant relied upon the decree. Their Lordships of the Judicial Committee held that it was for the defendant to prove that Thakur Parshad on whose admission the Settlement decree had been passed had authority to admit the claim and that the Court of Wards had authorised him to make the admission.

In *Ram Autar and others* v. *Raja Muhammad Mumtaz Ali Khan* (2) the previous settlement decree had been obtained on the admission of one Salig Ram on behalf of the Court of Wards. This Salig Ram happened to be the brother of Ram Ghulam, the claimant. Their Lordships of the Privy Council were of opinion that having regard to the facts disclosed by the proof of the settlement decree was not binding upon the minor represented by the Court of Wards. Salig Ram who appeared before the Settlement Court to represent the Court of Wards and to protect the interests of the minor taluqdar was on account of his relationship with the claimant an interested party and the authority to admit

(1) (1896) L.R., 23 I.A., 75. (2) (1897) L.R., 24 I.A., 107.

the claim obtained from the Deputy Commissioner by Salig Ram was not a good authority as it had been obtained without disclosing his relationship to the applicants or his personal interest in the success of the case. None of these cases are applicable to the facts of the present case. There is no evidence that Mr. Cockerell, who appeared as a Counsel for the Court of Wards before the Judicial Commissioner's Court, had been expressly asked not to admit the documents denied before the trial court. For aught we know he may have obtained instructions from the Court of Wards to admit the documents which he did. From our experience we believe that a counsel of Mr. Cockerell's position must have consulted his client beforehand. Further we are of opinion that a counsel appearing in a case from the very nature of his duties and for the purpose of a proper conduct of the case must be deemed to have implied authority to admit or deny a document, to press or withdraw an issue in the case, to examine a witness or call no witnesses and to such other acts which are required for the proper management and conduct of the trial. We are of opinion that the Court of Wards was bound by the admission of the genuineness of the documents in question by Mr. Cockerell. It would be enough for us on this point to cite a ruling of their Lordships of the Privy Council reported in *Sheonandan Prasad Singh* v. *Hakim Abdul Fateh Mohammad Reza* (1)

We are, therefore, of opinion that the plaintiff is bound by the findings in the former suit to the effect that Raja Sarabjit Singh granted Chak Rahramau to Ghulam Dastgir by *patta*, dated the 11th March, 1859, that the original *patta* was lost and the secondary evidence thereof was admissible and duly proved and that the *patta* conferred heritable rights in the *chak* on Ghulam Dastgir.

(II) Genuineness of the patta

After our finding on the question of *res judicata*, in fact, it is not necessary for us to decide point No. 2,

(1) (1935) L.R., 62 I.A., p. 196.

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on merits, but as our attention has been drawn to the evidence on the record bearing on the point we shall refer to it briefly and give our decision. Exhibit A-6 is a letter, dated the 4th December, 1858, written by Raja Sarabjit Singh to Ghulam Dastgir. This document is proved by Exhibits A-29, A-31 and A-30. These are the copies of proceedings containing the statements of Lal Bahadur and Ibad Ali made in the previous suit. By this letter the Raja promised to give the lease of the entire *chak* and the *sir* lands and to uphold his rights in future as usual provided that Ghulam Dastgir helped him in getting a settlement of the village in his favour. Exhibit A-7 is the copy of Ghulam Dastgir's application for sub-settlement. On the 31st December, 1858, Jawahir Karinda on behalf of the Raja stated before the Settlement Court that an agreement had been arrived at between the parties that Ghulam Dastgir would withdraw his claim and in lieu thereof the Raja would grant him a perpetual lease of the village at a proper *jama* and shall uphold the same from generation to generation. This statement was verified by Ghulam Dastgir, who withdrew his claim (*vide* Exhibits A-8 and A-9). On the 1st March, 1859, the Raja acknowledged the services of Ghulam Dastgir and invited him to his place for the purpose of executing the lease in his favour. Exhibit A-15 is the copy of the lease itself granted on the 11th March, 1859, i.e. ten days after the letter (Exhibit A-11). The execution of the lease is further supported by another letter (Exhibit A-16) written by the Raja to Ghulam Dastgir on the 10th January, 1865, wherein a distinct reference has been made to a written lease. This letter was also proved by Lal Bahadur and Abid Ali in the former suit (*vide* Exhibits A-29 to A-31). On behalf of the plaintiff it was stated that the village was granted to Ghulam Dastgir by an oral lease but of this there is no evidence on the record.

As against all this evidence reliance was placed on certain reports of the Sarbarakar of the Court of Wards and the letters of the Raja denying the execution of the lease as well as certain *wasilbaqis* (*vide* Exhibits 11 to 21 and 35). All these documents were produced in the first suit and were considered by the learned Judicial Commissioners. The letters of the Raja are of a period subsequent to his estate being taken under the superintendence of the Court of Wards. We are not prepared to put any faith in these documents in the face of more direct and contemporaneous evidence produced on behalf of the defendants and hold that a written lease was in fact granted by Raja Sarabjit Singh to Ghulam Dastgir on 11th March, 1859.

Now as to the loss of the document, the story of the defendants, as disclosed by Mubarak Ali in the previous suit, was that after the institution of the suit in 1893 it was handed over to Munshi Kurban Ahmad, Vakil, who gave it to Aziz-uddin, agent of Mubarak Ali, with instruction to take it to the office of the Sub-Registrar and to search for documents bearing the signatures of the Raja resembling the one on the lease. Aziz-ud-din accordingly went to the registration office, searched the registers and then left with the original *patta* as he thought in his pocket. He soon discovered that the *patta* was not there in his pocket and returned to the registration office for a search. A report of loss was made at the police station. Aziz-ud-din was examined in the former suit and his statement was believed by the learned Judicial Commissioners, and we have no reason to take a different view. The copy of the lease produced in this case (Exhibit A-15) is the same which was produced in the former suit. On the statement of Aziz-ud-din it was held that Exhibit A-15 was a true copy of the original *patta* granted by Raja Sarabjit Singh. The learned Civil Judge, who tried the present case, came to the conclusion that the loss of the original *patta* had been proved and that Exhibit A-15 was a true copy of it, and the same view had been

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taken in the former suit by the Judicial Commissioners. On a consideration of all the evidence in the case we have no reason to differ in the finding of the learned trial Judge.

(III) The interpretation of the lease

Ziaul Hasan and Radha Krishna, JJ.

The main controversy in the case between the parties has ranged round the question whether transferable rights in land were granted by the lease, dated the 11th March, 1859, or not. Before we discuss this point on the merits it may be observed that we have not been able to follow the distinction made by the learned Civil Judge between an under-proprietor and a lessee holding land with heritable and transferable rights. The learned Civil Judge has found that the defendants have failed to prove that they hold under-proprietary rights but has held them to be holding under a perpetual lease with transferable rights. The word "under-proprietor" is defined in the Oudh Rent Act as a person possessing a heritable and transferable right of property in land for which he is liable or but for a contract or decree would be liable to pay rent. This definition covers the perpetual lessee holding land with heritable and transferable rights. It may be that the word "under-proprietor" is a general term and is applicable to all persons holding land on payment of rent with heritable and transferable rights, howsoever those rights may have been acquired. The under-proprietary right may be created in many ways, for instance, under the Oudh Sub-settlement Act by a declaration under section 107-H of the Oudh Rent Act in a suit for assessment of rent or by the sale of an under-proprietary interest by the proprietor having carved it out of his proprietary rights in land. A landlord may as well create an under-proprietor by executing a perpetual lease. The finding of the court below that the defendants held under a perpetual lease conferring upon the lessee heritable and transferable rights is inconsistent with his other finding that the defendants

are not under-proprietors. It may be that the court below was considering a claim to under-proprietary rights outside the lease, dated the 11th March, 1859, but we may observe that no such case was either put forward in the pleadings or argued before us (*vide* paragraphs 19 and 20 of the written statement). The right of transfer in paragraph 20 was claimed in respect of the rights of a lessee under the provisions of the Transfer of Property Act whatever those rights may be. The rights owned and possessed by Ghulam Dastgir, the original lessee, prior to his claim for sub-settlement were referred to in arguments as evidence of surrounding circumstances in respect of the interpretation of the lease.

Coming to the merits of the question, we may observe that it was admitted before us that the provisions of the Transfer of Property Act (IV of 1882) would apply to the lease, although it was executed long before the Act came into force, firstly because the law was the same before the passing of that Act as after it and secondly because in the absence of any specific law on the point the Court would be justified in referring to the provisions of the Transfer of Property Act as embodying the rules of equity, justice and good conscience which would be applicable. In order to give a correct meaning of the words used in the lease for the purpose of defining the rights of the lessee it would be necessary to refer to certain attendant circumstances. Exhibits A-2, A-4 and A-34 would show that one Khadim Ali was the owner of the entire or major part of village Chak Rahramau and had mortgaged certain lands and shares of that village to Imam Bakhsh, the father of Ghulam Dastgir. Exhibit A-5 is a *parwana* of the year 1845 in the name of Masnad Ali, the uncle of Ghulam Dastgir, from the Chakledar entrusting Chak Rahramau to him and enjoining upon him to pay revenue in the treasury in instalment after instalment. Exhibit A-30 is the copy of the statement of Abid Hasan examined in the previous litigation between the parties. He stated

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that Masnad Ali and Imam Bakhsh possessed the *chak* which ultimately came into the possession of Ghulam Dastgir. It has already been stated that Raja Sarabjit Singh and Ghulam Dastgir were rival claimants to sub-settlement at the time of the second summary settlement. No *sanad* in respect of the village in dispute had been granted to the Raja till then, and the dispute was with regard to proprietary rights in the village. On the 4th December, 1858, the Raja sent his Karinda Jawahir with a letter (Exhibit A-6) to Ghulam Dastgir, in which he sought his help in securing the settlement of the village in his favour and promised that "all the plots of *sir* land bearing old rental with other proprietary rights which are in your possession from old time shall be upheld also in future as usual". This letter embodies an admission on the part of the Raja that Ghulam Dastgir held proprietary rights in the village. On the 23rd December, 1858, Ghulam Dastgir filed a claim for sub-settlement in his favour. It does not appear whether he ignored the request of the Raja for the time being or he did so in order to put off the other claimants from whom the Raja feared some opposition. At any rate, it is clear that on the 31st December, 1858, Ghulam Dastgir and Jawahir, the person mentioned in the letter Exhibit A-6, appeared before the Settlement Court. Jawahir made the following statement:

> "My client, Raja Sarabjit Singh, has made the plaintiff to agree to the fact that the plaintiff should withdraw his claim and in lieu thereof the defendant shall grant a perpetual lease of the village to the plaintiff at a proper jama and shall uphold the same from generation to generation. This statement of mine may be got verified from the plaintiff and settlement of this village be made with Raja Sarabjit Singh."

Thereupon Ghulam Dastgir made the following statement and withdrew his claim:

> "The statement of the *karinda* of Raja Sarabjit Singh in respect of my willingness is correct and in accordance with that I the deponent at this time withdraw from my claim about this village, its settlement be made with Raja Sarabjit Singh."

The application of Ghulam Dastgir was ordered to be dismissed (*vide* Exhibit A-14). The Raja thus bound himself to grant a perpetual lease of the village to Ghulam Dastgir with rights lasting from generation to generation and wrote a letter of thanks to him (Exhibit A-11) on the 25th Rajab 1275 Hirji, which would be equivalent to the 1st March, 1859, in which he emphasised that he would not go against his writing (reference is to his letter Exhibit A-6) and invited him to take the lease. Ten days later the lease (the copy of which is Exhibit A-15) was executed. The translation of this lease may be reproduced here:

> "Signature of Raja Sarabjit Singh in Hindi.
>
> Perpetual lease in favour of Sheikh Ghulam Dastgir, zamindar of village Rahramau from the beginning of 1266 Fasli.
>
> Let it be known to you that the perpetual lease of entire land, cultivated and uncultivated of village Chak Rahramau, belonging to me, comprised in the Ramnagar Estate, has been granted to you for ever at the *jama* of Rs.2,550 half of which amounts to Rs.1,275 in lieu of your loyalty and abstaining from putting forward a claim you should after letting out the land, comprised in the said *chak*, to your entire satisfaction continue to pay the dues assessed by me and should remain in occupation of the said village. No interference whatever shall ever be made contrary to this writing on my behalf and on behalf of my representatives. All the *malkana* rights due from ryots and *sir* land, etc. which you enjoyed and are in possession from old time shall as usual be upheld and maintained in your favour. Excepting the proposed *jama* of the *theka*, mentioned above, nothing more shall be taken ever on my behalf. You should remain satisfied in every way and always try for my welfare.
>
> *Dated 5th Shaban 1275 Hijri.*
>
> Signature of Bhikhari Lal, Patwari, in Hindi."

It is contended by the learned Counsel for the plaintiff-appellant that the only dispositive words in this lease, although described as a perpetual lease, are "has been granted to you for ever" and these words are satisfied by the grant being for the life of Ghulam Dastgir.

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Reliance was placed on two decisions of their Lordships of the Judicial Committee in *Rajah Rameshar Bakhsh Singh* v. *Arjun Singh* (1) and *Aziz-un-nissa* v. *Tasadduk Husain Khan* (2). We do not think that these cases are applicable inasmuch as the deeds in these cases were executed under very different circumstances. In the first case the deed was made by a taluqdar in favour of a junior member of the joint family as a maintenance grant which connotes *prima facie* an intention that it should be for life. In the other case the word "*hamesha*" was used in an award by which a certain allowance per mensem was fixed for the brother of the defendant in that case. Their Lordships in interpreting the words "*hamesha*" occurring in the award observed that they were not inconsistent with limiting the interest given but the circumstances under which the instrument was made or the subsequent conduct of the parties may show the intention with sufficient certainty to enable the Courts to presume that the grant was perpetual. Their Lordships did not see in the circumstances under which the award was made anything which would enable them to pronounce that the allowance was payable after the death of the grantee.

It is always dangerous to interpret a document with reference to the interpretation placed upon another document made in different circumstances. In the present case we know that Ghulam Dastgir withdrew his claim in consideration of an agreement made on behalf of the Raja that his previous *malikana* rights would be respected and that he shall grant a perpetual lease of the village and shall uphold it from generation to generation. The lease, therefore, was executed in fulfilment of the agreement mentioned above and we are of opinion that the words "perpetual lease granted for ever" stand for the words "perpetual lease enjoyable from generation to generation in proprietary rights" (that is, under-proprietary rights). The words "perpetual" and "for ever" are words of flexible amplitude,

(1) (1900) L.R., 28 I.A., p. 1. (2) (1901) L.R., 28 I.A., p. 65.

and if the circumstance under which the instrument is made and the subsequent conduct of parties show an intention with clearness and certainty that a heritable and transferable grant was made, then it is open to the Court to give that meaning to these words.

Two letters were written by Raja Sarabjit Singh to Ghulam Dastgir (Exhibits A-16 and A-17) on the 10th January, 1865, and the 31st July, 1874, respectively. In the first of these letters the Raja referred to the statement made by his *karinda* before the Settlement Court and to the written lease which he had executed. By the second letter he agreed to give Rs.206 annually to the daughter-in-law of Ghulam Dastgir on the occasion of *salam karai,* i.e. the first occasion on which a bride comes to the family of her husband and pays respects to elders. This sum of Rs.206 was to be credited towards the rent from generation to generation. How could this deduction be made from generation to generation unless the lease itself was from generation to generation?

The lease has already been held in the previous litigation by the late Judicial Commissioner's Court to confer heritable rights upon the lessee (*vide* Exhibit A-25). We have already held that this finding cannot be questioned by the plaintiff. The words "generation to generation", which as we have stated above should be read in the lease for the words "for ever", have acquired a technical meaning in India. There is nothing in the lease which may show that the interest conveyed was sought to be limited in its scope. The lease was executed in settlement of a dispute relating to proprietary title, which is a very strong circumstance in favour of holding that the transferor intended to transfer all his interest in the property, i.e. a heritable and transferable estate. We rely for this view upon a decision of their Lordships of the Privy Council in *Thakur Harihar Buksh* v. *Thakur Uman Parshad* (1). The principle of section 8 of the Transfer of Property Act also favours this interpretation.

(1) (1886) L.R., 14 I.A., 7.

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In this Court in a previous case, *Sheo Bahadur Singh* v. *Bishunath Saran Singh* (1) the same rule of interpretation was applied. Their Lordships at page 25 observed as follows:

> "Ordinarily a transfer of land without restrictions carries with it every incident of ownership and passes to the transferee all interests which the transferor is then able to pass in the property and in the legal incidents thereof. Therefore, where a grant is proved to be for "generation after generation" it must be construed, in the absence of anything to the contrary, to be a grant of an absolute estate."

The learned Counsel for the appellant has argued that the principle of interpretation applied in the above-mentioned case is much too wide and is not supported by other decisions of the late Judicial Commissioner's Court or of this Court and reference has been made to the following decisions:

Nand Ram v. *Amanat Fatima Begam* (2);

Muhammad Abdul Karim Khan v. *Niwaz Singh* (3);

Hira Lal and others v. *Gajraj Kuer and others* (4).

In our opinion all these cases are distinguishable.

In *Nand Ram* v. *Amanat Fatima Begam* (2) the under-proprietary rights claimed were negatived and a perpetual hereditary farming lease of the village was decreed. It was held that in the circumstances of that particular case a decree which was passed with the consent of the taluqdar who had resisted the claim to the under-proprietary rights did not convey transferable rights.

In *Muhammad Abdul Karim Khan* v. *Niwaz Singh* (3) the facts are practically identical with the facts in *Nand Ram* v. *Amanat Fatima Begam* (2).

In the case of *Hira Lal and others* v. *Gajraj Kuer and others* (4) the lease acknowledged the existing occu-

(1) (1927) 4 O.W.N., p. 15.
(2) (1903) 6 O.C., p. 94.
(3) (1909) 12 O.C., 267.
(4) (1936) I.L.R., 11 Luck., 203.

pancy rights for life which had been decreed previously and made those rights available from generation to generation on payment of an annual rent, which was described in the lease as *malikana*. The Hon'ble Judges who decided the case held that in the particular circumstances of that case much stronger language was needed to show that in place of the original occupancy right which was acknowledged an under-proprietary right had been conferred for future. The learned Judges did not take exception to the rule of interpretation adopted in *Sheo Bahadur Singh* v. *Bishunath Saran Singh* (1), but held that in the case before them there were indications that the estate was not meant to be transferable.

The learned Counsel for the appellant strongly relied upon the admission of Ghulam Dastgir contained in Exhibit 31 in the year 1866 as well as the report of the Naib Sadar Munsarim (Exhibit 32) in the same case in which the above statement was made. A perusal of these two documents does not show to what proceeding they relate and how that proceeding terminated. All that we can gather from the heading is that there was some sort of inquiry in respect of the land, held, on concession in village Chak Rahramau. Rup Narain, the agent of the Raja, stated that the Raja had granted 182 bighas and odd land to Ghulam Dastgir and "that this village has not been granted by virtue of any right nor is it his *sir*. It is only *kastkari* tenure and the *chak* is held by Ghulam Dastgir by way of *theka mustajari*." This statement of Rup Narain was accepted as correct by Ghulam Dastgir and the report (Exhibit 32) of the Naib Sadar Munsarim is based upon these two statements. We attach no value to the statements of Rup Narain and Ghulam Dastgir recorded in Exhibit 31 in the face of the letters of the Raja (Exhibit A-16, dated the 10th January, 1865, and Exhibit A-17, dated the 31st July, 1874), written later than this statement in

(1) (1927) 4 O.W.N., 15.

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Exhibit 31. The learned Counsel for the appellant has further referred us to the statement of the Raja, dated the 29th October, 1888 (Exhibit 35), which contains a complete denial by the Raja of the lease granted by him on the 11th March, 1859. This statement of the Raja cannot be believed. In fact, in the previous litigation before the learned Judicial Commissioners in appeal it was clearly held that the denial by the Raja of any matter was worth nothing, and the learned Counsel who appeared for him in that Court asked the learned Judicial Commissioners to disregard the Raja's evidence entirely and admitted that the greater part of it was false.

It has further been strenuously contended before us that there were several litigations between the parties between the death of Ghulam Dastgir and the institution of the present suit and in none of these the defendants laid any claim to hold transferable rights in the land covered by the lease and all that they did was merely to claim heritable rights. The litigations that took place between the parties are—

the suit under section 9 of the Specific Relief Act by Sheikh Mubarak Ali against the Deputy Commissioner of Bara Banki (*vide* Exhibit A-113),

the suit for possession brought by the Deputy Commissioner, in charge of the Court of Wards, Ramnagar Estate, against Sheikh Mubarak Ali (Exhibit A-21) ending in the judgment of the late Judicial Commissioner's Court in appeal (Exhibit A-25),

the suit to contest the notice of ejectment between Sheikh Mubarak Ali and the Deputy Commissioner in charge of the Court of Wards, Ramnagar Estate (Exhibit A-121) and Exhibit 2, the order of the Board of Revenue, and

the correction of papers case ending in the order of the Board of Revenue (Exhibit A-79).

It is urged that in none of these cases the defendants put forward a case that they were full under-proprietors

of the land in dispute and this was a very strong circumstance against them. We are of opinion, however, that it was not absolutely necessary for the defendants or their predecessors to put forward their full claim in any of these cases. All that was necessary for them to do was to allege such rights in themselves as were enough to save them from ejectment and to ensure their possession of the land.

On a consideration of all the attendant circumstances, the language of the lease in dispute and the conduct of the parties subsequent to the time when the lease was granted, we have come to the conclusion that by the lease a heritable and transferable interest in land was granted to Ghulam Dastgir which for the purpose of this case amounts to under-proprietary rights.

(IV) Abandonment

The decision of this point has to be given on the assumption that Ghulam Dastgir had no transferable rights under the deed and that it conveyed a heritable interest to him and no more. The plaintiff's case on this point is contained in paragraph 4 of the plaint, read with paragraph 3. His case is that by the act of making an absolute gift on the 1st January, 1923, of the property in suit by Mubarak Ali an abandonment of his interest occurred in the eyes of law and the plaintiff became entitled to re-enter into possession. The plaint is in Urdu language but paragraph 4 mentions the word "abandonment" in English, which was used therein as a technical term. To this the defendant's reply was that even though no transferable estate was granted by the lease, yet the lessee's rights, whatever they may be, were heritable and transferable (*vide* paragraph 20 of the written statement) meaning thereby that the mere act of transfer did not involve loss of the lessee's rights to the lessee.

The learned counsel for the plaintiff before the trial court stated in his arguments that if it were necessary

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to find a legal expression to indicate the fact detailed in paragraphs 3 and 4 of the plaint in the language of the Transfer of Property Act, he would put it under "implied surrender" as used in section 111 (*f*) of that Act.

This plea was negatived by the court of trial and abandonment as meaning "implied surrender" has not been persisted in arguments before this Court for the obvious reason that an implied surrender takes place either by the creation of new relationship between the lessor and the lessee, such as the acceptance of a new lease which must operate as an implied surrender of the old one,, or in other ways based upon the consent of the parties, or by the relinquishment of possession by the lessee and taking over possession by the lessor which would lead to the inference of an implied surrender of the lease.

In the present case soon after the gift Mubarak Ali made attempts, with the help and collusion of the donees, to recover back possession of the gifted property on the ground that the gift was fictitious and succeeded in it, and, ultimately, we find that the Board of Revenue maintained his name in the revenue papers as it originally stood. There was at no time a relinquishment of possession in favour of the plaintiff.

In this Court reliance has been placed in support of the case of an abandonment upon section 111(*g*), i.e. termination of the lease by forfeiture in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself.

It has been argued that the act of making an absolute gift by Mubarak Ali in 1923 and setting up a higher right than actually owned by the lessee, such as claiming under-proprietary rights in the Rent Courts in the correction of papers case, amounted to a disclaimer of the rights of the lessor and fulfilled the requirement of the provisions of selection 111 (*g*) (2), and reliance for this contention was placed upon the following cases:

Baba v. *Vishvanath Joshi* (1).

(1) (1883) I.L.R., 8 Bom., 228.

Mahipat Rane and others v. *Lakshman and others* (1)

Kally Dass Ahiri v. *Manmohini Dassee* (2).

A very spirited protest has been put forward on behalf of respondents that this is a totally new case and should not be allowed to be set up in appeal. It has been urged that the respondents have had no opportunity of putting forward their case and their evidence in reply to this new case. There is considerable force in this contention and we are not prepared to allow the plaintiff-appellant to change his case to the extent to which he proposes to do. The learned Counsel for the respondents has, however, replied to this new case on whatever evidence that there is on record, and we shall give our decision in brief on this point.

We are of opinion that if a lessee sets up higher rights under the lease than what the lessor accepts were granted to him, there is no disclaimer of the title of the landlord, for instance, setting up permanent rights of tenancy is not the denial of the proprietary rights of the lessor. A perusal of the pleadings of the defendants in the correction of papers case would show that they were all the time claiming under the lease. They never denied their liability to pay the rent fixed. All that they did was to assert a higher status as lessees than was admitted by the plaintiff, and, in our opinion, such an assertion does not amount to the denial of the title of the landlord or claiming the title for themselves and does not fall within the language of section 111 (*g*) (2). The decision in *Baba* v. *Vishvanath Joshi* (3) was not followed in a later case by the same High Court (*vide Vithu* v. *Dhondi* (4).

In *Mahipat Rane and others* v. *Lakshman and others* (1), a tenant under a plea of ownership had succeeded in obtaining a possessory order in a suit before a Mamlatdar. It was held that the defendants had

(1) (1900) I.L.R., 24 Bom., 426.
(2) (1897) I.L.R., 24 Cal., 440.
(3) (1883) I.L.R., 8 Bom., 228.
(4) (1890) I.L.R., 15 Bom., 407, at page 413.

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distinctly repudiated the landlord's title in the possessory suit and were not entitled to a notice to quit.

The case of *Kally Dass Ahiri* v. *Manmohini Dassee* (1) was in respect of the recovery of certain premises in Calcutta in possession of the defendant. In a suit for arrears of rent in the Small Cause Court the defendant had denied a tenancy under the plaintiff and had claimed occupation as owner of the land and this denial was held to retail forfeiture.

None of these cases is applicable to the facts of the present case.

In *Kali Krishna Tagore* v. *Golam Ally* (2), it was held that although the defendant in a previous suit for rent had repudiated the particular holding which the plaintiff attributed to him, he did not question the plaintiff's right to receive rent and, therefore, did not in any sense repudiate the landlord's title.

In *Kemalooti* v. *Muhamed* (3), SESHAGIRI AYYAR, J., at page 632 observed as follows:

> "In ordinary parlance the expression 'renounce' would connote that some act is done to the knowledge of the landlord which was calculated to convey to him the impression that the tenant repudiated his title."

NAPIER, J. also took the same view and observed as follows (p. 636).

> "It seems to me that both the words 'repudiation' and 'renunciation' require something a great deal stronger than a mere assertion not communicated (to) the landlord. It is impossible to lay down a hard and fast rule but to my mind a very good test to apply would be, whether the assertion would operate as a starting point for adverse possession against the landlord (*vide Doe* v. *Williams* (4) (where Lord Mansfield applies this test) and viewed in this light, the assertion will not come within its mischief."

In *Maharaja of Jeypore* v. *Rukmini Pattamahevi* (5) Lord PHILLIMORE, at page 118 observed as follows:

> "The qualification that the denial must be in clear and unmistakable terms has not unfrequently been applied

(1) (1897) I.L.R., 24 Cal., 440. (2) (1886) I.L.R., 13 Cal., 248.
(3) (1917) I.L.R., 41 Mad., 629. (4) (1777) 2 Cowp. 622.
(5) (1919) L.R., 46 I.A., 109.

by the courts in India, which have held that where a tenant admits that he does hold as a tenant of the person who claims to be his landlord, but disputes the terms of the tenancy, and sets up terms more favourable to himself, he does not, though he fails in establishing a more favourable tenancy, so far deny the landlord's title as to work a forfeiture."

In our opinion the law as laid down by their Lordships of the Judicial Committee is conclusive and we hold that in the circumstances of the present case the assertion of the defendants that they were holding under the lease conferring upon the lessee not only heritable but transferable rights as well, does not amount to a disclaimer of the title of the plaintiff.

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We are further of opinion that if there was any forfeiture under the principle of section 111 (g) (2) of the Transfer of Property Act, it was waived by the acceptance of rent by the plaintiff which became due since the forfeiture. Exhibits A-56 to A-75 are the treasury receipts in favour of Mubarak Ali showing that he used to deposit the rent due from him in the treasury of the Tahsildar, and Exhibits 28, 41, 42, 43 and 29 show that the amount of rent deposited by Mubarak Ali used to be withdrawn on behalf of the plaintiff's predecessor, Raja Harnam Singh, under protest. The recital in Exhibit 28 is that the amount was payable to the estate which it was desired to receive under protest. The same was the language more or less of the other applications. Acceptance of rent, even under protest, amounts to an acceptance under section 112 sufficient to operate as a waiver, as held in *Kali Krishna Tagore* v. *Fuzle Ali Chowdhry* (1) and *Bengal Nagpur Railway Company, Limited* v. *Firm Bal Mukunda Biseswar Lall* (2). On the case that forfeiture had taken place the lessor had no right to take the money at all unless he took it as rent. If he took it as rent the legal consequences of such act must follow however much he may repudiate it (*Faithful Croft* v. *Benjamin Lumley*, (3).

(1) (1883) I.L.R., 9 Cal., 843 at page 846.
(2) (1923) A.I.R., Cal., 663. (3) 6 H.L.C., 672.

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This point must, therefore, be decided against the plaintiff-appellant.

(V) Limitation

The relief for possession has been held by the court below to be within time. It has been held that the declaratory relief is barred by time. The relief for a declaration is really ancillary to the relief for possession. For a mere relief for a declaration it is admitted that the Article applicable would be Article 120 of Schedule III of the Indian Limitation Act, but we do not agree with the learned Judge of the trial Court that the cause of action for that relief arose when the plaintiff for the first time learnt of the gift by Mubarak Ali. Soon after the gift Mubarak Ali made attempts to recover possession from the donees on the ground that the deed was fictitious. Further although the contesting defendants in the correction of papers case set up that they were under-proprietors, yet the Revenue Court did not act up to their assertion and removed their names from the *khewat* and entered the name of Mubarak Ali as *thekadar* (*vide* the final order of the Board of Revenue in the correction of *khewat* case, Exhibit A-79). We do not think that under the circumstances it was necessary for, or incumbent upon, the plaintiff landlord to sue for a declaration that the defendants had no transferable rights. In *Raja Mohammad Mumtaz Ali Khan* v. *Mohan Singh* (1) their Lordships of the Judicial Committee at page 237 observed as follows:

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> "The Board are unable to hold that the simple assertion of a proprietary right in a judicial proceeding connected with the land in dispute which *ex hypothesi* was unfounded at the date when it was made, can, by the mere lapse of six or twelve years, convert what was an occupancy or tenant title into that of an under-proprietor."

Further on they observed as follows:

> "They are unable to affirm as a general proposition of law that a person who is, in fact, in possession of land under a tenancy or occupancy title can, by a mere assertion in a judicial proceeding and the lapse of six or twelve

(1) (1923) 26 O.C., p. 231.

years without that assertion having been successfully challenged, obtain a title as an under-proprietor to the lands. Such a judgment might have very far-reaching results and would almost certainly lead to a flood of litigation."

In the present case the entry in the papers has always continued as in the past and the attempt of the respondents to have an under-proprietary *khewat* has failed. We are of opinion that the claim for a declaration was not barred by time.

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On our findings on points Nos. 3 and 4 the plaintiff's suit fails and must be dismissed. We, therefore, uphold the decree passed by the court below and dismiss the appeal with costs.

Appeal dismissed.

APPELLATE CIVIL

Before Mr. Justice Ziaul Hasan and Mr. Justice Radha Krishna Srivastava

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August, 16

KANDHAIYA BUX SINGH AND OTHERS (PLAINTIFFS-APPELLANTS) *v.* THAKURAIN SUKHRAJ KUAR AND OTHERS (DEFENDANTS-RESPONDENTS)*

Decree against father—Execution proceedings—Sons not made parties even to execution proceedings—Share of sons, if bound by sale—Landlord and tenant—"Bila tasfia" entry in revenue records, meaning of.

Where a decree is against the father the shares of two of his sons cannot be deemed to have been exempted from sale even if they were not made parties to the execution proceedings and only the name of one of the sons was brought on the record. *Kaniz Abbas* v. *Bala Din* (1), *Babu Lal* v. *Sukhrani* (2), and *Malkarjun* v. *Narhari* (3), relied on.

The entry in the revenue records that a person is holding certain land *bila tasfia* can at best show that he is holding the land as tenant and not as under-proprietor.

Messrs. *M. Wasim* and *Bhagwati Nath Srivastava*, for the appellants.

Mr. *P. N. Chaudhari*, for respondent No. 1.

*First Civil Appeal No. 103 of 1936, against the order of Babu Avadh Behari Lal, Sub-Judge of Sultanpur, dated the 23rd May, 1936.

(1) (1925) 2 O.W.N., 34. (2) (1926) 3 O.W.N., 771.
(3) (1900) I.L.R., 25 Bom., 337