APPELLATE CIVIL

Before Mr. Justice R. L. Yorke and Mr. Justice Radha Krishna Srivastava

SAKINA BEGAM, MSI. (PLAINTIFF-APPELLANT) *v.* DURGA SAHAI, PANDIT AND OTHERS (DEFENDANTS-RESPONDENTS)* 1939 November 22

Oudh Rent Act (XXII of 1886), section 19(1)—Rent—Remission in rent on ground of slump in prices due to abundance of produce, whether can be allowed under section 19(1)—Previous sanction of Deputy Commissioner for remission, if necessary—General order allowing remission in a particular locality, if sufficient.

A claim for remission of rent on account of slump in prices, which slump is due to abundance in produce of the land does not fall within section 19(1), of the Oudh Rent Act.

The only construction to which the language of section 19(1) of the Oudh Rent Act lends itself is that a separate previous sanction of the Deputy Commissioner for remission should be obtained in each case by a court seized of a suit for arrears of rent before it can allow that remission from the rent by an under-proprietor. A general order allowing remission in a particular locality is not enough.

Messrs. *Ghulam Imam* and *Kalbe Abbas,* for the appellant.

Mr. *Lakshmi Shankar Misra,* for the respondents.

YORKE and RADHA KRISHNA, JJ.:—This is a plaintiff's appeal under section 12(2) of the Oudh Courts Act from an appellate decree of a learned single Judge of this Court in a second Rent Appeal.

The plaintiff appellant brought a suit for recovery of Rs.937-9 under section 108(2) of the Oudh Rent Act for arrears of rent for 1339 to 1341 Fasli against the defendants respondents. It may be noted that the plaintiff allowed a remission to the defendants for the years in suit to the extent of the remission made in the land revenue in her favour. The trial court

*Appeal under section 12(2) Oudh Courts' Act, No. 1 of 1937, against the order of Hon'ble Mr. Justice Ziaul Hasan, Judge, Chief Court of Oudh, dated the 17th December, 1936.

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allowed remissions in the rent to the defendants to the extent of Rs.689-5-9, which was double the amount of revenue remitted to the plaintiff. The trial court was of opinion that such remissions were allowable to the defendants under section 19-A of the Oudh Rent Act.

On an appeal by the plaintiff the learned District Judge took the view that section 19-A of the Oudh Rent Act had no application in the case of the defendants, who were admitted before him to carry the status of under-proprietors. He raised the amount of the decree by a sum of Rs.317-4-9 on the view that under the terms of the perpetual lease (Ex. A-1), the title deed of the defendants, remission only to the extent of the remission in revenue could be allowed.

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In second appeal, which came on before a single Judge of this Court, it was held that although section 19-A was not applicable, yet the defendants-respondents were entitled to an appropriate reduction in their rent under section 19(1) of the Oudh Rent Act. A reduction in rent was, therefore, allowed to the defendants at the rate of $1\frac{1}{2}$ times the remission allowed by the Government in the land revenue *plus* cesses calculated according to section 8 of the Local Rates Act. There were other points in contest between the parties but we are no longer concerned with them in this appeal.

The only point which has been taken in this appeal is that section 19(1) of the Oudh Rent Act has no application to the present case.

A faint attempt was made on behalf of the appellant to urge that the status of the defendants-respondents was not that of under-proprietors and that they were mere thekadars as recorded in the khewat. From the judgment of the learned District Judge it is clear that it was the appellant's own case that the respondents were under-proprietors and we find that the decision of the learned District Judge, as well as the decision in

Second Rent Appeal No. 23, of 1935 in this Court, proceeded on that footing. It is too late for the appellant to raise this question now and we disallow it.

As regards the chief point in controversy in this appeal, the learned counsel for the appellant has urged that section 19(1) is not applicable, that that section applies only when there has been a diminution in the area of the land in the occupation of the under-proprietor by diluvian or otherwise, or if the produce of that land has been diminished by drought, hail, or other calamity beyond his control. It is further contended that no remission from the rent payable can be allowed by a court unless previous sanction of the Deputy Commissioner has been obtained. Section 19(1) of the Oudh Rent Act reads as follows:

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> "Notwithstanding anything in the last foregoing section, a court when it makes a decree for an arrear of rent, may, with the previous sanction of the Deputy Commissioner, allow such remission from the rent payable by any under-proprietor or tenant as appears equitable, if the area of the land in his occupation has been materially diminished by diluvian or otherwise, or if the produce of that land has been diminished by drought, hail, or other calamity beyond his control, to such an extent that the full amount of rent payable by him cannot, in the opinion of the court, be paid."

On a perusal of the record of the present case it appears that the defendants claimed remission on account of slump in prices, which slump was due to abundance in produce of the land, and so it is clear that the case does not fall within the clause reproduced above. It is rather surprising that this contention in the form in which it has been addressed to us was not presented before our learned brother, who decided the Second Rent Appeal, and that accounts for the absence of any reference to it in the judgment under appeal. It was urged on behalf of the respondents that Ex. 2, which was prepared by the patwari under the supervision of the

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Qanungo, allows remissions on grounds other than slump in prices also and that the defendants were entitled to remission in respect of those grounds. There is no independent evidence at all on the record to establish any ground for remission other than the slump in prices. The defendants must be held bound by their pleadings and in their pleadings the ground upon which they claimed remission was the slump in prices. We are of opinion that on the facts of the case section 19(1) of the Oudh Rent Act does not arise for application.

Yorke and Radha Krishna J.J.

On the second point, the view taken by the learned single Judge was that section 19(1) of the Oudh Rent Act did not contemplate that the sanction of the Deputy Commissioner should be obtained in each and every case by the court deciding the case for arrears of rent, and it was quite sufficient if the Deputy Commissioner had passed general orders with regard to remissions in rent of under-proprietors in respect of a particular area. The learned Judge was of opinion that such general orders must be deemed to exist in view of the fact that the statement (Ex. 2) was prepared by the patwari on that footing. We regret we do not find ourselves in agreement with this view of the learned Judge. In our view the only construction to which the language of section 19(1) lends itself is that a separate previous sanction of the Deputy Commissioner for remission should be obtained in each case by a court seized of a suit for arrears of rent before it can allow that remission from the rent payable by an underproprietor. The words "A court when it makes a decree for an arrear of rent, may, with the previous sanction of the Deputy Commissioner, allow such remission from the rent payable by any underproprietor or tenant as appears equitable" clearly mean that what the court has to do in each case, when considering the question of remission, is first to determine as to what would be the amount to be allowed as a remission on equitable grounds and then

to obtain the sanction of the Deputy Commissioner in respect thereof. The sanction of the Deputy Commissioner would naturally depend upon what the court has determined to be an equitable remission. Both the court and the Deputy Commissioner have to determine the question of remission judicially after giving due consideration to the facts of each individual case, and it is hardly conceivable that a general order of allowing remission in a particular locality was in the contemplation of the legislature when it used the words "with the previous sanction of the Deputy Commissioner" in section 19(1) of the Oudh Rent Act. In this connection it may be noted that section 120 of the Oudh Rent Act provides for an appeal from an order of the Deputy Commissioner sanctioning a remission of rent under section 19 of the Oudh Rent Act. How can a general order of the Deputy Commissioner allowing remission of rent in a particular locality be the subject of an appeal under this section is not easy to contemplate. The provision contained in section 120 for an appeal against the order of sanction by the Deputy Commissioner strongly supports the view that we have expressed above. We also get support for our view from the Board of Revenue Circular No. 11 (Department II) in Volume I of 1918 referred to us. It lays down that the file of the sanction of the Deputy Commissioner will be kept separate from the file of the rent suit. This circular seems to have been enacted for the facility of appeals under section 120 of the Oudh Rent Act. An appeal under section 120 of the Oudh Rent Act lies to the Commissioner, while an appeal from a decree in the suit itself lies to the District Judge, if the value of the suit does not exceed Rs.5,000, and to the Chief Court if the value of the suit exceeds Rs.5.000 (*vide* section 119 of the Oudh Rent Act). Neither section 120 of the Oudh Rent Act nor the circular of the Board of Revenue referred to above was brought to the notice of our

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learned brother in the Second Rent Appeal. We have further examined Ex. 2, the statement of the patwari, and find no reference in it to any general order in respect of the remission in the locality in which the land in suit is situated such as has been referred to in support of the application under section 19 of the Oudh Rent Act. We hold further that for this reason also section 19(1) of the Oudh Rent Act has no application.

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Lastly, it has been argued by the learned counsel for the respondents that under section 2 of the United Provinces Regularization of Remissions Act (XIV of 1938) the general order of the Deputy Commissioner allowing remission cannot be questioned in any civil or revenue court. The application of this section does not arise for consideration in view of the fact, as observed above, that in the present case there is no evidence of any such order as has been relied upon.

The result is that this appeal succeeds. The appellant was satisfied with the decree of the first appellate court and did not appeal against it and so that decree is upheld. The appellant will get costs in this Court of this appeal and the Second Rent Appeal from the respondents.

Appeal allowed.