APPELLATE CIVIL.

Before Sir Shadi Lal Chief Justice and Mr. Justice Fforde.

1923

Feb. 3.

ZIA-UD-DIN (DEFENDANT)—Appellent,

versus

FAKHR-UD-DIN AHMAD KHAN AND OTHERS (PLAINTIFFS)—Respondents.

Civil Appeal No. 27 of 1920.

Landlord and Tenant—Sounjidari leases, granted for agricultural purposes subject to performance of certain services—whether terminable on Sounjidar denying the title of the grantor—Transfer of Property Act, IV of 1882, section 111 (g).

The defendant held the 31 *kanals* 9 *marlas* of land in dispute on a *Sounjidar* tenure under the plaintiffs. The service to be performed by the defendant was that he was to tend a certain graveyard and the tenure could be put an end to on (1) death, (2) departure from the place, (3) immorality, or (4) failure to tend the graveyard. The plaintiffs however prayed for defendant's ejectment mainly on the ground that he had denied his landlord's title and their competence to terminate the lease on that ground was the only question before the High Court. The denial relied upon was made in the grounds of appeal drafted by counsel employed by the defendant in an appeal in a Land Acquisition case in which the defendant was described as the owner of the land *acquired in the case, i.e.* a portion of the land leased. The defendant had however described himself throughout the proceedings as a *Sounjidar*.

Held, that having regard to the language used and the circumstances under which it came to be used and the intention of the defendant, the statement in the grounds of appeal did not amount to a denial of the landlord's title in respect of the land in suit.

In considering whether what has taken place amounts in law to a denial of the landlord's title, the Court must have regard not only to the language used and the circumstances under which it came to be used, but must also consider what the tenant intended by using the particular words under the particular set of circumstances.

Second appeal from the decree of Lt.-Colonel B. O. Roe, District Judge, Jullundur, dated the 24th October 1919, affirming that of Pandit *Sri Kishen, Subordinate Judge, 2nd Class, Jullundur, dated the 7th April 1919 and decreeing the plaintiffs' claim.*

B. D. KURESHI, for Appellant.

NIAZ MUHAMMAD, for Respondents.

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The judgment of the Court was delivered by—

FFORDE J.—The plaintiffs are the proprietors of certain lands in the village of Dhogri, and the defendant is what is known as a *Sounjidar*, that is, a petty grantee of land who holds for life or for a term of years subject to the performance of certain services to be rendered to the grantors.

The service to be performed in the present case was that the defendant should tend a certain graveyard, and his tenure could only be put an end to on one or more of the following grounds :—

(1) Death.

(2) Departure from the place.

(3) Immorality.

(4) Failure to tend the graveyard.

The present suit has been brought to terminate the defendant's possession mainly on the ground that he has denied his landlord's title. Other grounds have been alleged but the issues framed upon them have been found in defendant's favour and may, therefore, be dismissed from further consideration.

The only question for our determination is whether or not the plaintiffs are entitled to resume possession of the land granted by reason of a denial of title.

The denial alleged is contained in the grounds of appeal drafted by counsel employed by the defendant in an appeal in a land acquisition case, dated the 4th October 1915. These grounds allege that the defendant is the owner of the land acquired in the case. The claim of ownership, which is made for the purpose of getting the largest possible compensation for the land acquired, is confined throughout to the particular land then acquired. The expressions made use of by the draftsman are "the land now acquired," "the land acquired in this case," and "the land in suit". These are the expressions relied upon by the plaintiffs as establishing a denial by the tenant of the landlord's title of such a character as to effect a forfeiture within the well-known rule of the Common law of England which is also expressly enacted in Section 111 (*g*) of the Indian Transfer of Property Act.

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In order to succeed in their claim for possession based on forfeiture, plaintiffs have to satisfy us —

firstly, that there has in fact been a denial of the nature contemplated by law ;

secondly, that the denial is in respect of the land now sought to be recovered ; and

thirdly, that the principle of forfeiture is applicable to an interest in land of the nature held by the defendant.

As to the first question, we are of opinion that the expressions used by counsel in drafting the grounds to a memorandum of appeal do not amount to "a distinct unequivocal renunciation of the tenancy" which is essential to constitute a disclaimer such as the law contemplates. We have to bear in mind not only the nature of the document in which the expressions occur, but also the nature of the proceedings in regard to which the document was drafted. It was not a pleading in a suit between the parties for possession of the land, but a formal document grounding an appeal against an award fixing the compensation price for land acquired by the Government under certain statutory powers. The parties were both concerned only in getting the highest sum possible for their respective interests in the particular area of land acquired, and counsel in his discretion must have framed his grounds of appeal with that object only in view. We cannot hold that the expressions used by the pleader in that document amounted to a renunciation by the client of his character of tenant in respect of the lands now in dispute. In considering whether what has taken place amounts in law to a denial of the landlord's title, the Court must have regard not only to the language used and the circumstances under which it came to be used, but must also consider what the tenant intended by using the particular words under the particular set of circumstances. The intention of the defendant can be more fairly gathered from the attitude he himself adopted throughout the proceedings in question than from the formal grounds framed by his counsel, and

throughout those proceedings the defendant never referred to himself otherwise than as a *sanjidar*—that is a tenant of a particular type who renders services in lieu of rent.

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Upon the facts of this particular case we are satisfied that the plaintiffs have not proved a denial of title by the defendant so as to entitle them to resume possession on the ground of forfeiture.

It has been further urged by counsel for the defendant that the principle of forfeiture by denial of the landlord's title does not apply to a tenancy of this kind, as such a tenancy is a lease for agricultural purposes, and is accordingly exempted from the provisions of section 111 (*g*) of the Transfer of Property Act by section 117 of that Act, which expressly provides that none of the provisions of the Chapter shall apply to such cases. It is argued that in Provinces to which this Act applies the forfeiture clause has been held not to apply to agricultural holdings, and that, therefore, in a Province to which the Act does not apply agricultural lease-holders should be equally immune.

It is urged on the other hand that the liability to forfeiture and the exemptions of agricultural lease-holders from such forfeiture are both statutory provisions contained in one and the same enactment; and that where there are no such statutory provisions the ordinary common law principle which makes no exception in favour of lettings for agricultural purposes must prevail.

In view, however, of the conclusion we have already come to it is not necessary for the purposes of this appeal to express an opinion on this further question which may be reserved for future decision should the point come up for determination.

For the reasons already expressed the appeal must be allowed and the suit dismissed with costs.

C. H. O.

Appeal accepted.