

## APPELLATE CIVIL.

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*Before Mr. Justice Harrison and Mr. Justice Dalip Singh.*

JIWAN DAS (DEFENDANT) Appellant

*versus*

SHER MUHAMMAD KHAN (PLAINTIFF)

Respondent.

1926

May 8.

Civil Appeal No. 1352 of 1922.

*Jurisdiction (Civil or Revenue)—Suit on basis of a document acknowledging a certain sum due as rent under a lease terminated by mutual consent—Novation—Punjab Tenancy Act, XVI of 1887, section 77 (3) (i).*

Three men, of whom J. D. defendant was one, jointly took a lease of land from the plaintiff for 7 years. After 3 harvests the lease was ended by mutual consent and a document was executed by J. D. in which he acknowledged unconditionally his liability to pay Rs. 1,849-14-3. The plaintiff sued for recovery of that sum. It was contended that the suit was not cognizable by a Civil Court as the relation of landlord and tenant had once existed between the parties and the money had become due as rent.

*Held*, that although the liability arose out of the existence of the original lease and the relation of landlord and tenant between the parties, the old contract having been terminated and a new contract substituted, the relation became that of creditor and debtor and the suit was rightly instituted in the Civil Court.

*Second appeal from the decree of J. K. M. Tapp, Esquire, District Judge, Shahpur, at Sargodha, dated the 3rd March 1922, varying that of Sheikh Rukanud-Din, Subordinate Judge, 1st Class, Sargodha, dated the 29th April 1921, by directing the defendant to pay to the plaintiff the sum of Rs. 1,849-14-3.*

NANAK CHAND, for Appellant.

BADRI DAS, for Respondent.

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v.  
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MAD KHAN.

The judgment of the Court was delivered by—  
HARRISON J.—Two separate suits were brought by *Khan Bahadur Malik Sher Muhammad Khan* against two persons, *Jiwan Das* and *Diwan Chand*, to recover definite sums of money. Both suits have been decreed and both the judgment-debtors have appealed. The appeal of *Diwan Chand* has been compromised and that of *Jiwan Das* alone remains.

The facts are simple enough. Three men, of whom *Jiwan Das* was one, jointly took a lease for a large area of land for a period of seven years from the plaintiff. After three harvests had been reaped the lease was ended by mutual consent. A document was executed by the defendant *Jiwan Das* in which he acknowledged unconditionally his liability to pay a sum of Rs. 1,849-14-3. Another document was also executed in favour of the plaintiff. The suit was originally instituted on the basis of the acknowledgment. It was subsequently withdrawn with permission to bring a fresh suit, and a fresh plaint was presented upon the other document. This was never amended but the plaintiff was permitted to proceed as if his suit had been in the original form. Issues were framed accordingly and no objection was raised on this point before the District Judge, the parties having understood throughout the basis on which the litigation was proceeding. We do not allow the objection now raised on this point.

It was held by both the lower Courts that the suit was competent, that there had been a novation of contract, and that the suit was not barred by limitation. A decree was accordingly given. On second appeal the only points for us to decide are whether the suit was cognizable by a Civil Court and

whether it was within time. Mr. Nanak Chand contends that once there has been the relation of landlord and tenant between the parties and money has become due as rent no subsequent transaction can alter the nature of the debt and make it the subject matter of a suit cognizable by a Civil Court. Mr. Badri Das, on the other hand, relies on the facts of this particular case. He explains that originally the three tenants were jointly and severally liable and in accordance with the terms of the lease Rs. 500 earnest money had to be paid in advance and accounted for at the end of seven years on the termination of the lease. The result of the agreement was (1) the lease was ended, (2) the liability was apportioned, and (3) the earnest money which had not been paid was added to the liability and divided between the three original tenants. He contends, and in our opinion rightly, that this cannot be held to amount to anything short of a complete novation of contract creating an entirely new liability. Although it is true that the liability arose out of the existence of the original lease and the relation of landlord and tenant between the parties, the old contract having been terminated and superseded and a new contract substituted, the relations became that of creditor and debtor, and the suit was rightly instituted in the Civil Court.

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We accordingly dismiss the appeal with costs.

A. N. C.

*Appeal dismissed.*

1926

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v.  
SHER MUHAM-  
MAD KHAN.