APPELLATE CIVIL.

Before Tek Chand and Monroe JJ.

MUSSAMMAT SURJI AND ANOTHER (DECREE-HOLDERS), Appellants

versus

SHEO RAM AND ANOTHER (JUDGMENT-DEBTORS), Respondents.

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Feb. 2.

Civil Appeal No. 515 of 1932.

Punjab Alienation of Land Act, XIII of 1900, Section 16 (as amended by Punjab Act, I of 1931): whether amendment retrospective.

Held, that the effect of the amendment of Section 16 of the Punjab Alienation of Land Act, is to invalidate leases and mortgages for over 20 years, only if sanctioned *after* the passing of Punjab Act, I of 1931 ; whether the *decree* or *order* under execution was passed before or after its enactment. The amendment does not affect mortgages or leases which had been effected before the Act of 1931 came into force.

Miscellaneous second appeal from the order of R. B. Lala *Chuni Lal, District Judge, Karnal, dated the 7th January, 1932, reversing that of* Lala *Kishan Chand, Junior Subordinate Judge, Karnal, dated the 10th April 1931, and remanding the case to Lower Court for executing the decree in accordance with law.*

SHAMAIR CHAND, for Appellants.

NANAK CHAND PANDIT and MEHR CHAND SUD, for Respondents.

The order, dated 4th November, 1932, referring the case to a Division Bench—

BHIDE J.—In this case certain land belonging to a member of an agricultural tribe was ordered to be mortgaged in execution of a money-decree by order of the Junior Subordinate Judge, Karnal, dated the

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10th April, 1931. The mortgage was not for any specified period. An appeal was preferred from this order to the District Judge, Karnal, and one of the points raised in appeal was that the order contravened the provisions of Punjab Act, I of 1931, by which section 16 of the Punjab Alienation of Land Act was amended. The learned District Judge upheld the contention and set aside the order under appeal. From this decision a second appeal has now been preferred to this Court and it is contended on behalf of the appellant that the order in question was passed before the Punjab Act I of 1931 came into force, and is, therefore, not governed by that fact.

The provision of Act I of 1931, which is said to be contravened, runs as follows :—

"Notwithstanding anything contained in any other enactment for the time being in force no land belonging to a member of an agricultural tribe shall, in execution of any decree or order of any civil or revenue Court, whether made before or after the enactment of this sub-section, be leased or farmed for a period exceeding 20 years or mortgaged except in one of the forms permitted by section 6."

In view of the words "whether made before or after enactment of this sub-section" occurring in the above provision, the learned District Judge has held that the legislature intended to render illegal leases and mortgages for an indefinite period even when sanctioned before the passing of the Act.

It is contended on behalf of the appellant that the words on which the learned District Judge has relied in support of his interpretation of the section merely refer to the words 'decree or order' occurring in the preceding clause and the section merely pro-

vides that a mortgage or lease sanctioned after the enactment of the section would be illegal even if the decree or order in execution of which it is made was made before its enactment. This appears to me to be the plain grammatical and natural interpretation of the section. The learned counsel for the respondent has suggested that the words " whether made before or after the enactment of this sub-section " refer to the word ' execution ' occurring in the preceding clause. But this would be, I think, obviously a very forced and unnatural interpretation. It is not usual to use the word ' make ' in connection with ' execution.' A decree-holder is not said to ' make execution,' and I cannot believe that such clumsy language could have been used by the Legislature. The principal sentence in the new sub-section inserted by Act I of 1931 is that ' no land belonging to a member of an agricultural tribe *shall* be leased or farmed for a period exceeding 20 years or mortgaged except in one of the forms permitted by section 6.' This provision is obviously intended to operate in future, *i.e.*, during the period subsequent to the enactment, and not retrospectively. The remaining portions of the sub-section are merely qualifying clauses.

It may be noted here that similar words have been used in sub-section (1) of section 16 of the Punjab Alienation of Land Act, which runs as follows :—

" No land belonging to a member of an agricultural tribe shall be sold in execution of any decree or order of any Civil or Revenue Court, whether made before or after the commencement of this Act."

If the interpretation placed by the learned District Judge on sub-section (2) inserted by Act I of 1931 is to be followed in interpreting the above sub-

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section, sub-section (1) would appear to render illegal all Court sales of land belonging to members of an agricultural tribe effected even before the passing of the Punjab Alienation of Land Act. It seems fairly obvious that such could not possibly have been the intention.

The learned District Judge seems to be influenced mainly by what he believed to be the intention of the Legislature. In the first place, I do not see any good ground for believing that the Legislature really intended to give retrospective effect to the section so as to invalidate leases or mortgages for over 20 years sanctioned before the enactment of Act I of 1931. I think the Legislature only meant to invalidate all such mortgages or leases sanctioned after the passing of the Act—whether the decree or order under execution was passed before or after its enactment. But whatever the intention of the Legislature may have been, it is a well-established principle of interpretation of statutes that when the words of a statute admit of but one meaning (as appears to me the case in the present instance) 'the Court is not at liberty to speculate on the intention of the Legislature, and to construe them according to his own notions of what ought to have been enacted. Nothing could be more dangerous than to make such considerations the ground for construing an enactment that is unambiguous in itself. To depart from the meaning on account of such views is, in truth, not to construe the Act, but to alter it. But the business of the interpretor is not to improve the statute, it is to expound it. The question for him is not what the Legislature meant, but what its language means, *i e.* what the Act has said that it meant. To give a construc-

tion contrary to, or different from, that which the words import or can possibly import, is not to interpret law, but to make it, and Judges are to remember that their office is *jus dicere* not *jus dare*." (Maxwell on Interpretation of Statutes, 6th edition, page 10.)

I am, therefore, of opinion that the contention of the learned counsel for the appellant is sound. As, however, the point raised is important, and it is desirable to have an authoritative pronouncement for the guidance of subordinate Courts, I consider it preferable to refer this case to a Division Bench.

The appeal should be placed before a Division Bench for disposal as early as practicable. It is unnecessary to print the record.

JUDGMENT OF THE DIVISION BENCH.

MONROE J.—This is a second appeal from the judgment, dated the 7th of January, 1932, of the District Judge of Karnal. On the 15th December, 1928, the appellant obtained a decree for Rs. 1,250 and costs against the respondent, and on the 10th April, 1931, a mortgage for the sum of Rs. 1,475 was sanctioned by the executing Court of agricultural land belonging to the judgment-debtor in favour of a *Jat* agriculturist for an unlimited period: this order was set aside by the judgment under appeal. One of the contentions of the respondent before the District Judge, was that this mortgage was bad by reason of the Punjab Alienation of Land Amendment Act, I of 1931, which provides in section 2 as follows:—

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"Notwithstanding anything contained in any other enactment for the time being in force no land

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belonging to a member of an agricultural tribe shall, in execution of any decree or order of any civil or revenue Court, whether made before or after the enactment of this sub-section, be leased or farmed for a period exceeding 20 years or mortgaged except in one of the forms permitted by section 6."

This contention was accepted by the learned District Judge who held that the Legislature intended to apply the new provisions with retrospective effect even to such leases or mortgages as had been effected by the Courts before the Act came in force on the 3rd July, 1931. The case then came before Mr. Justice Bhide, who by a judgment of the 4th November, 1932, expressed his opinion that the contention of the appellant, namely, that Act I of 1931 did not affect the case, was correct, but considering that the point raised was an important one referred the case to a Division Bench.

We have heard arguments of the learned counsel for both sides, and have considered the judgment of Mr. Justice Bhide. I express my respectful agreement with Mr. Justice Bhide's opinion, and I consider that it is only necessary to say that the words "whether made before or after the enactment of this sub-section" can possibly be referred only to the words "decree or order" immediately preceding. The whole frame of the new section shows that it is intended to operate in the future, that is to say, after the passing of the Act, and that the words "whether made before or after the enactment of this sub-section" were introduced to avoid the argument that if a decree or order had been obtained before the passing of the Act, the right of the decree-holder who had not obtained an order for a mortgage or lease

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would still subsist as it stood before the passing of the Act. These words clearly deprive the decree-holder who had not taken any steps in execution before the passing of the Act of having a lease or mortgage which would last for more than twenty years but do nothing more.

I accordingly think that the appeal ought to be allowed and the order of the executing Court should be restored and the appellant should have his costs against the respondent throughout.

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TEK CHAND J.—I agree with the view taken by Mr. Justice Bhide and my learned brother. Both on the wording of the section, and in accordance with the well-settled canons of interpretation of statutes, the Act cannot affect the mortgages or leases which had been effected before it came into force. It may be mentioned that the same learned District Judge, who decided this case, took the contrary view in another case decided by him on the 29th of February, 1932, in which he stated that he had erroneously decided this case.

N. F. E.

Appeal accepted.