

LETTERS PATENT APPEAL.

Before Tek Chand and Abdul Rashid JJ.

MUNICIPAL COMMITTEE, DELHI (DEFENDANT)

Appellant

versus

ABDULLAH (PLAINTIFF) Respondent.

Letters Patent Appeal No. 4 of 1931.

Punjab Municipal Act, III of 1911, sections 81, 170: Implied agreement to pay rent for use of a platform belonging to the Municipal Committee — whether rent recoverable under section 81.

The plaintiff sued for a declaration that the proceedings taken by the Municipality for recovery of rent in respect of certain platforms, under section 81 of the Punjab Municipal Act, are illegal and *ultra vires*. The trial Court found that the platforms belonged to the Municipality, but that any dues in respect thereof could only be recovered by means of a civil suit. On appeal the plaintiff's suit was dismissed, the Court holding that though there was no written or oral agreement, an implied agreement arose from payment of rent in the past and continued occupation and that section 81 of the Act was applicable having regard to section 170.

Held, that there being no permission in writing for temporary occupation, section 170 and consequently section 81 did not apply; the payment of rent in the past being proof merely of the existence of the relationship of landlord and tenant between the parties.

And, as the liability of the plaintiff for payment of rent arose out of a contract between the parties, it must be determined and adjudicated upon by a Civil Court.

Mana Ram v. The Crown (1), relied upon.

Bhikhari Lal v. Municipal Committee, Jagadhari (2), discussed and distinguished.

Letters Patent Appeal from the decree passed by Jai Lal J. in C. A. No. 1616 of 1930, on 18th Decem-

(1) (1926) I. L. R. 7 Lah. 568. (2) 1931 A. I. R. (Lah.) 753.

ber, 1930, reversing that of Mr. L. Middleton, District Judge, Delhi, dated 28th May, 1930, and restoring that of Bawa Daswandha Singh, Subordinate Judge, 1st Class, Delhi, dated 21st October, 1929, granting the plaintiff a declaration to the effect that the proceedings under section 81 of the Punjab Municipal Act for the recovery of the arrears of rent are invalid and dismissing the rest of the claim.

M. C. MAHAJAN and J. R. AGNIHOTRI, for Appellant.

SHAMAIR CHAND, for Respondent.

ABDUL RASHID J.—Letters Patent Appeals Nos. 4, 5, 6 and 7 of 1931 have arisen out of four separate suits instituted by the plaintiffs-appellants against the Municipal Committee of Delhi for a declaration in each case to the effect that the action of the Municipal Committee in attempting to recover certain dues from them under section 81 of the Punjab Municipal Act was illegal, and for an injunction restraining the defendant from proceeding further with that action. In three out of the four suits the plaintiffs also claimed damages to the extent of Rs. 100 in each case. Briefly stated the allegations of the plaintiffs were that they were tenants of certain shops belonging to the Fatehpuri Mosque at Delhi, that certain platforms existed in front of the shops that they occupied and that these platforms also belonged to the same mosque; that the Municipal Committee wrongly claimed ownership of these platforms and had taken steps under section 81 of the Punjab Municipal Act for recovery of the rent alleged to be payable for the occupation of these platforms. It was further alleged that the moveable property of the

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plaintiffs had been attached at the instance of the Municipal Committee under the orders of a Magistrate purporting to be issued under section 81 of the Punjab Municipal Act. The trial Court found that the platforms belonged to the defendant, and that the defendant was, therefore, justified in demanding rent for them. It held, however, that the dues in question were not recoverable under section 81 of the Punjab Municipal Act, and that the Municipal Committee could recover such dues only by means of a Civil Suit. It, therefore, gave the plaintiffs a declaration to the effect that the proceedings under section 81 of the Punjab Municipal Act for the recovery of the arrears of rent were invalid. The rest of the claim was dismissed in each case.

The defendant appealed against these decrees and the learned District Judge accepted the appeals and dismissed the suits of the plaintiffs. The plaintiffs, thereupon, instituted four separate appeals in this Court and the learned Judge in Chambers set aside the decrees of the learned District Judge, and restored those of the trial Court with costs throughout. The defendant has, therefore, preferred four separate appeals under Clause 10 of the Letters Patent.

It was contended by the learned counsel for the appellants that the dues in question were recoverable under section 81 of the Punjab Municipal Act as these dues must be regarded "as any other money claimable by a committee under this Act." It was urged that, in view of the finding of the learned District Judge to the effect that though there was no proof of any written or oral agreement to pay rent an implied agreement arises from payment of the rent in

the past coupled with the continued occupation of the *chabutras* by the plaintiffs, the provisions of section 170 of the Municipal Act became applicable to the facts of the present case. Section 170 lays down that "the committee may grant permission *in writing* for the temporary occupation of any street or land vested in it for the purpose of making any temporary erection thereon subject to such conditions as it may prescribe for the safety or convenience of persons passing by and may charge fees for such permission and may at its discretion withdraw the permission." It is clear, therefore, that this section cannot possibly cover a case where an implied agreement is to be deduced from the payment of rent in the past. It has been specifically laid down in this section that the committee may grant permission *in writing* for the temporary occupation of any street or land vested in it and may charge fees for such permission. It was conceded that no written permission was ever granted by the Municipal Committee for the occupation of these platforms by the plaintiffs. The payment of rent in the past merely shows that the relation of landlord and tenant existed between the plaintiffs and the Municipal Committee. The present dispute, therefore, in each case is a dispute between a landlord and a tenant for the recovery of arrears of rent. The liability of the plaintiffs for the payment of the rent arises out of a contract between the parties, and must be determined and adjudicated upon by a civil Court. Reference may be made in this connection on *Mana Ram v. The Crown* (1), where it was held that the committee was not entitled to recover money due under a contract by setting in motion the

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penal provisions of section 81 of the Punjab Municipal Act, the dispute being one for determination by a Civil Court.

The learned counsel for the appellants placed reliance on *Bhikhari Lal v. Municipal Committee, Jagadhari* (1), where it was observed that when a Municipal Committee grants permission to a person for a temporary occupation of a portion of a street for a temporary erection thereon, subject to a specified sum being paid annually and subject also to the condition that the permission could be withdrawn at any time, the sum is a fee claimable under section 170 of the Punjab Municipal Act. The judgment in that case is a very brief one, and does not show that the committee depended on an implied agreement arising from the payment of rent in the past. It is possible that in that case permission in writing had been granted by the Committee to the petitioner for the temporary occupation of a portion of the street, and that in these circumstances the specific provisions of section 170 of the Punjab Municipal Act were applicable to that case. In my judgment, in the absence of a written permission by the Municipal Committee, section 170 of the Punjab Municipal Act is wholly inapplicable, and the Municipal Committee cannot avail itself of the penal provisions of section 81 in order to realise rent due for the use and occupation of the platforms. It was conceded that if section 170 of the Punjab Municipal Act were held to be inapplicable, the Municipal Committee would not be justified in invoking the penal provisions of section 81 of the Act.

For the foregoing reasons, I would affirm the

decision of the learned Judge in Chambers, and dismiss these appeals with costs.

TEK CHAND J.—I agree.

A. N. C.

Appeal dismissed.

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APPELLATE CIVIL.

Before Shadi Lal C. J. and Abdul Qadir J.

MUSSAMMAT GHULAM JANNAT AND OTHERS
(DEFENDANTS) Appellants

versus

RAHMAT DIN (PLAINTIFF), MST. } Respondents.
NAWAB BIBI (DEFENDANT) }

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March 8.

Civil Appeal No 1902 of 1929.

Muhammadan Law—Will—Bequest in favour of daughter and step-daughters—to take effect after the death of the testator and his wife—whether confers vested estates on the legatees—Claim by brother's son of the testator—who did not consent to the will—how far affects the bequest.

One M. a Muhammadan, made a will, whereby he gave the ownership of his landed property to his daughter N and the three daughters of his wife S. by her first husband, in equal shares, to be enjoyed by the four girls, after his death and that of his wife S. The son of the testator's brother, not having consented to the will after the testator's death, brought a suit for the recovery of his share of the property left by M.

Held, that the testator intended to give his daughter and his step-daughters, vested interests on his death, though their possession and enjoyment was postponed until after the death of his wife S. The property, therefore, did not vest in S. on his death.

Bilaso v. Muni Lal (1). *Madammal v. Devayyu* (2), relied upon.