

it was a clear case as the learned counsel would have us hold. In any case, it is impossible to say that the prosecution of the five petitioners for taking part in this transaction would be unreasonable in view of what happened, though the three persons were acquitted. The five petitioners were not charged of abetting an offence, which it has been found had not been committed. There is no reason for supposing that in the learned Judge's judgment the riot did not take place which resulted in the death of one man. The result, therefore, is that this reference must be discharged, and the order of the District Magistrate must stand.

E. H. M.

Reference discharged.

APPELLATE CIVIL.

Before Mr. Justice Brett and Mr. Justice Sharfuddin.

R. D. MEHTA
v.
GADADHAR RAI*.

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Lessor and lessee—Transfer by lessee—Liability of lessee to pay rent after transfer—Privity of estate—Transfer of Property Act (IV of 1882) s. 108.

The duration of liability of a lessee to pay rent to the lessor lasts as long as his estate remains in his possession and no longer; and after an assignment of the lease, the privity of estate between him and the lessor ceases, and the assignee becomes liable for the rent.

SECOND APPEAL by the defendant No. 1, Mr. R. D. Mehta.

This appeal arose out of an action brought by the plaintiffs to recover rent and royalties due for certain coal lands. The plaintiffs alleged that these lands were originally leased out to a certain Banamali Banerjee by a *potta*, dated 23rd November 1895. The defendant No. 1, on the 19th September 1899, purchased the twelve annas share in the property in execution

* Appeal from Appellate Decree, No. 2262 of 1907, against the decree of W. H. Vincent, Judicial Commissioner of Chota Nagpur, dated July 22, 1907, affirming the decree of Mahim Chandra Ghose, Subordinate Judge of Purulia, dated Oct. 25, 1906.

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of a decree. It appeared that he (defendant No. 1) transferred it to defendant No. 2, and the remaining four annas share passed to defendants 3 to 6. The present suit was against all the defendants for the rents for the years 1312 B. S., and for royalties from 1st of Bysack 1310 to Cheyt 1312.

The defendant No. 1 denied all liability to pay rent claimed, on the ground that his liability ceased after the sale of his interest to the defendant No. 2.

The Court of first instance having overruled the objection of defendant No. 1, decreed the plaintiffs' suit. On appeal, the decision of the Court of first instance was affirmed by the learned Judicial Commissioner of Chota Nagpur.

Against this decision defendant No. 1 appealed to the High Court.

Dr. Rashbehary Ghosh (with him *Babu Manmatha Nath Mukherjee*), for the appellant. The cases of *Sasi Bhushun Raha v. Tara Lal Singh Deo Bahadur* (1) and *Kunhanujan v. Anjelu* (2) cited in the judgment of the Judicial Commissioner, have no application. They refer to the case of the lessee and assignee of his interest. They do not refer to a case when there is an assignment from the assignee of the original lessee. The defendant No. 1 is an assignee from the original lessee, but he has transferred his interest to defendant No. 2. Section 108, clause (j) of the Transfer of Property Act is quite clear. The original lessee is liable as well as the defendant No. 2, but not defendant No. 1: see also *Foa on Landlord and Tenant*, p. 427.

Babu Joy Gopal Ghosh, for the respondent. Here the Judicial Commissioner has found that the defendant No. 1 by his conduct has accepted the position and become subject to exactly the same liabilities which the original lessee was subject to. The previous decree of 1902 for rent against the defendant No. 1 determines the rights of the parties under the lease. The defendant No. 1 has given no evidence against it, and he is liable for the rent.

(1) (1895) L. L. R. 22 Cal. 494.

(2) (1889) L. L. R. 17 Mad. 206.

BRETT AND SHARFUDDIN JJ. This appeal arises out of a case which appears to have been disposed of in both the lower Courts on the pleadings of the parties. The plaintiff sued to recover rents and royalties in respect of certain coal lands which had been originally leased out to one Banwari Lal Banerjee by a lease, dated the 23rd November 1895. Subsequently, on the 19th September 1899, a twelve-anna share in the property passed to defendant No. 1 at a sale in execution of a decree. The defendant No. 1, in his written statement, alleged that on the 19th May 1905, he, by a registered conveyance, transferred his interest in the twelve-anna share to defendant No. 2. It also appears from the judgments of the lower Courts that the plaintiffs admitted that subsequent to that transfer they received rents for 1311 from defendant No. 2. The present suit was brought to recover from defendants Nos. 1 and 2 the rent and royalties for the year 1312. Defendant No. 1 denied all liability for this rent, on the ground that his liability for rent ceased after the sale in 1905 of his interest to defendant No. 2. Both the lower Courts have held that defendant No. 1 is liable. Defendant No. 1 has appealed to this Court.

The grounds on which the lower Courts seemed to have based their decisions are that in 1902 a suit was brought by the plaintiffs for arrears of rent, and a decree was obtained by them against defendant No. 1, and from this fact it is concluded that, because in that suit the plaintiffs succeeded in recovering rents from defendant No. 1, the relationship of landlord and tenant between them must be held to have been then established, and in consequence the onus in the present suit rests on defendant No. 1 to prove that that relationship has been subsequently brought to an end. The lower Appellate Court was further of opinion that under the provisions of section 108 of the Transfer of Property Act defendant No. 1 was still liable for the rent as lessee, in spite of the fact that he had transferred his interest in the lands to defendant No. 2.

In our opinion, the view taken by the lower Courts cannot be maintained. Clearly in 1902 defendant No. 1 was the transferee in possession, and as such there was a privity of estate

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between him and the plaintiffs, and on the basis of that privity the plaintiffs were entitled to recover rent in that suit from him. But in the year for which the present rent is claimed that privity had been determined by the conveyance to defendant No. 2. In these circumstances the plaintiff is certainly not in law entitled to recover rent from defendant No. 1. The section of the Transfer of Property Act on which the learned Judge relies supports the view contrary to that which he has adopted. That section, in clause (j), states that "the lessee may transfer absolutely, or by way of mortgage or sub-lease, the whole or any part of his interest in the property, and any transferee of such interest or part may again transfer it." The clause goes on to say that the "lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease." The section expressly lays down the liabilities of the original lessee as distinguished from the liabilities of the subsequent transferee. In the present case the liability for rent under the provisions of that section would still attach to the original lessee and also to the present transferee, defendant No. 2, in possession. The duration of the liability in a case like the present, as between the lessor and the assignee, is clearly set out in his Treatise on the Law of Landlord and Tenant by Foa at page 427. The author points out that "the liability of the assignee to the lessor being founded wholly upon privity of estate—and each successive assignee stands in this respect upon the same footing—it obtains as long as his estate lasts, and no longer." It is clear, therefore, that after defendant No. 1, the assignee had transferred his interest in the land to defendant No. 2, the privity of estate between him and the lessor ceased. In these circumstances, we are of opinion that the view taken by both the lower Courts is incorrect, and that their judgments and decrees must be modified. We accordingly decree the appeal and modify the judgments and decrees of both the lower Courts, and direct that the suit as against defendant No. 1 be dismissed with costs in all the Courts. So far as defendant No. 2 and the other defendants are concerned the decree is confirmed.