Privy Council Appeal No. 42 of 1917.

United Provinces Appeal No. 1 of 1915.

Rani Parbati Kunwar - - - - *Appellant,*

v.

The Deputy Commissioner of Kheri and Another - - - - - - *Respondents.*

FROM

THE COURT OF THE BOARD OF REVENUE FOR THE UNITED PROVINCES OF AGRA AND OUDH.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 16TH APRIL, 1918.

Present at the Hearing:

VISCOUNT HALDANE.
LORD DUNEDIN.
LORD SUMNER.
SIR JOHN EDGE.
MR. AMEER ALI.

[*Delivered by* SIR JOHN EDGE.]

This is an appeal from a decree, dated the 2nd April, 1915, of the Board of Revenue for the United Provinces of Agra and Oudh, which set aside a decree, dated the 7th October, 1914, of the Court of the Commissioner of Lucknow, and restored a decree or order, dated the 4th June, 1914, of the Court of the Deputy Commissioner of Sitapur.

The suit in which this appeal has been brought was instituted in a Court of Revenue which alone had jurisdiction to entertain the suit, a Civil Court having no jurisdiction in the matter. In the suit the plaintiffs claimed a decree for the possession of the entire village mauza Bandhia Kalan, situate in pargana Nighasan, in the district of Kheri, by resumption of the Muafi, and in the alternative that the rent might be fixed at a proper amount under section 107G of Act XXII of 1886 (the Oudh Rent Act, 1886), and other reliefs which need not be referred to. The Deputy Commissioner of Sitapur, before whom the suit came for trial, did not grant a decree for resumption, but having found that the rent was liable to be enhanced under section 107G of Act XXII of 1886, by his decree declared that the defendant was a tenant of the mauza without any right of occupancy, and determined the rent to be payable at 2,000 rupees per annum. The only question to be

considered in this appeal is whether the rent at which the mauza was held by the defendant of the plaintiffs at the date of suit was or was not liable to be enhanced, and that question depends upon the nature of the lease under which the mauza was held by the defendant.

Mauza Bandhia Kalan is part of the taluqdari estate of Majhgain. On the 13th November, 1882, Raji Milap Singh, in whom was then vested that estate, by his will devised mauza Bandhia Kalan to his wife Rani Dhan Kunwar, who on his death obtained possession of the mauza. Thereafter Rani Dhan Kunwar, in order to provide maintenance for her daughter, who is the defendant in this suit and the appellant in this appeal, and maintenance for that daughter's son, executed on the 23rd February, 1891, the following lease :—

"Lease in favour of Chhoti Betia, *i.e.*, Parbati, who is married at Malanpur, and also in favour of the grandson, *i.e.*, the dear son of the said daughter, granted by Rani Dhan Kunwar, 'talukdar' of Majhgain and Bhur, pargana Nighasan.

"Mauza Bandhia Kalan, pargana and tahsil Nighasan, 'Hadbast' No. 61, owned and possessed by me, the executant, the revenue of which, along with that of the entire 'taluka,' is paid to Government, is leased to you from 1297 Fasli up to the term of your life and that of your dear son, at a 'jama' of 584 rupees per annum. You should take possession of the said mauza from 1297 Fasli as a lessee for life and bring into your own use all sorts of receipts which include 'mal' and 'siwai' and pay to me 584 rupees annual lease money, instalment by instalment, year by year, without objection, and all sorts of profits will belong to you and your dear son during your respective lives and after you and your dear son the lease of the mauza will end and it will, as before, revert to the possession of the holder of the 'ilaka' (estate). During your life and that of your dear son neither I nor any heir or representative of mine will have power to set aside the lease. If you do not pay the 'jama' reserved by the lease at the proper time, it will be duly recovered from you without interest by means of a suit in court. You should, during the period of your lease, fully carry out all orders issued by the authorities in respect of the village, so that no stigma of disobedience of orders might attach to you or to the 'taluka' (estate). You should keep the tenantry satisfied in every way, so that the population of the village might increase and the village might not become desolate. Under proper circumstances you are also authorised to eject the tenants so that you might eject them after issuing notice of ejectment. You should, however, see that they are not oppressed. You are authorised to enhance or reduce the rent of the tenants so far as it is just. You should carry on all the affairs of the village just as they have been hitherto conducted.

"These few presents have, therefore, been executed by way of a lease to stand as evidence.

"Boundaries of mauza Bandhia Kalan :—

"*East.*—Bandhia Khurd.
"*West.*—Hamlet of Gangaband.
"*North.*—Oudh forest.
"*South.*—Gangaband.

"Dated the 23rd February, 1891.

"RANI DHAN KUNWAR."

Under that lease the defendant became the thikadar or person to whom the collection of rents in the mauza had been leased by Rani Dhan Kunwar, who was then the landlord. Rani Dhan Kurwan died in 1891. After her death the taluq vested in Raghubar Singh, a plaintiff and one of the respondents, and in Raj Mangal Singh, represented in this suit and appeal by the Deputy Commissioner of Kheri as the special manager of the Court of Wards of the estate of Majhgain.

Land forming a mahal or part of a mahal which is under Chapter VII [A] of Act XXII of 1886 liable to be resumed by the proprietor or to have the rent payable in respect of it enhanced must be land held rent free or at a favourable rate of rent. By section 107I of the Act it is enacted that .—

"For the purposes of this Chapter (Chapter VII [A]) a grant of land at a favourable rate of rent means a grant of land at a rent less than the aggregate of the revenue and local rates payable thereon."

All three Courts in India have found that the rent of 584 rupees, which was made payable by the lease of the 23rd February, 1891, was a favourable rate of rent within the meaning of Chapter VII [A]. But it has been contended on behalf of the appellant that Chapter VII [A] does not apply to persons holding land as thikadars. That contention is based on section 3, clause (10) of the Act, according to which a—

"tenant means any person, not being an under-proprietor, who is liable to pay rent; and in the following portions of this Act, namely, sections, 13, 14, 15, 17, 18, 29, 53, 54, 55, sub-sections (1) and (2), 56, 59, 60, 61, 62, 108, 126, and 138, but in no others, the expression 'tenant' shall be held to include a thikadar or person to whom the collection of rents in a village, or portion of a village has been leased by the landlord."

Section 3 (10) which contains that definition was part of Act XXII of 1886 as it was passed in 1886. Chapter VII [A], which deals with the resumption and the enhancement of the rent of land held rent free or at a favourable rate of rent and contains section 107A to section 107K was added to Act XXII of 1886 in 1901 by an amending Act, U.P. Act IV of 1901, and consequently the specific enactments of Chapter VII [A] are not limited in their application by section 3 (10), which must be regarded as a mere glossary defining the terms "tenant" and "thikadar" as those terms are employed in the Act XXII of 1886 as it stood in 1886 when it was passed.

The object of enacting Chaper VII [A] which the Government of India had in view obviously was the protection of the Government revenue assessed upon agricultural lands, and as far as possible to maintain proprietors of lands in a position to enable them to pay the Government revenue and the local rates assessed upon their lands and thus to avoid losing their lands by making default in payment of the revenue due to the State.

In some parts of India, in Oudh for instance, many proprietors of lands were in the habit of acting improvidently in making grants of lands, by lease or otherwise, rent free or at rents which did not enable them to pay the public revenue and local rates assessed upon their lands. As early as 1793 the Governor-General in Council passed Regulation XIX of 1793, with a similar object of protecting the Government revenue derivable from lands. In section 1 of that regulation it is stated: "By the ancient law of the country, the ruling power is entitled to a certain proportion of the produce of every bigha of land (demandable in money or kind, according to local custom) unless it transfers its right thereto for a term or in perpetuity, or limits the public demand upon the whole of the lands belonging to an individual, leaving him to appropriate to his own use the difference between the value of such proportion of the produce and the sum payable to the public, whilst he continues to discharge the latter. As a necessary consequence of this law, if a zemindar made a grant of any part of his lands to be held exempt from payment of revenue, it was considered void from being an alienation of the dues of Government without its sanction. Had the validity of such grants been admitted, it is obvious that the revenue of Government would have been liable to gradual diminution." That regulation was applied to Oudh after the annexion of that province.

By section 52 of Act XVII of 1876 (the Oudh Land Revenue Act, 1876), it was enacted:—

"52. All grants (whether in writing or otherwise) by proprietors, or the persons whom they represent, of land to be held exempt from the payment of rent or at a favourable rate of rent, are hereby declared to be liable to resumption, unless such grants have been sanctioned or confirmed by the Governor-General in Council or the Chief Commissioner.

"Provided that, if such grants are held under a written instrument (whether executed before or after the passing of this Act) by which the grantor expressly agrees that the grant shall not be resumed, they shall be held valid against him (but not as against his representatives after his death) during the continuance of the settlement of the district in which the land is situate which was current at the date of the grant."

Section 52 was subject to the procedure and exemptions contained in sections 53, 54, and 55 of that Act:

Section 52 of Act XVII of 1876 was wide enough to apply to grants to thikadars of land in Oudh exempt from the payment of rent or held at a favourable rate of rent, and it authorised the resumption of such grants when they had not been sanctioned or confirmed by the Governor-General in Council or the Chief Commissioner of Oudh. Sections 52, 53, 54 and 55 of Act XVII of 1876 continued in force until Act IV of 1901 was passed. By section 107E, which by Act IV of 1901 was added to Act XXII of 1886 it was enacted as follows:—

"107E. Land held rent free or at a favourable rate shall be liable to resumption, only when by the terms of the grant or by local custom it is held.—

"(*a.*) At the pleasure of the grantor;

"(*b.*) For the performance of specific service, religious or secular, which the proprietor no longer requires;

"(*c.*) Conditionally or for a term, and the conditions are broken or the term expires."

* * * * *

That section limited the lands which might otherwise have been resumed if section 52 of Act XVII of 1876 had remained in force, and in that respect was more favourable to the grantees of such lands than section 52 of Act XVII of 1876 had been.

By section 107A, which was one of the sections which were added to Act XXII of 1886, the proprietor of a mahal or part of a mahal was, amongst other rights of suit, given a right to sue to enhance the rent of any land held at a favourable rate of rent, whether so held by grant in writing or otherwise. And by section 107B all land in Oudh held at a favourable rate of rent was made liable to enhancement of rent unless the holder establishes certain specified facts, which have not been established in this case. That section is subject to the following proviso: "Provided that no land held under a written instrument, whether executed before or after the 1st day of January, 1902, by which the grantor expressly agrees that the grant shall not be resumed, shall be liable to resumption or assessment or enhancement of rent until the grantor dies, or the term of the current settlement of the local area in which the grant is situated expires, whichever event first occurs." In the present case not only did the grantor of the lease die before suit, but the term of the settlement current at the date of the lease, of the local area in which mauza Bandhia Kalan is situate expired before the suit was brought.

By section 107G, which is one of the sections which in 1901 were added to Act XXII of 1886, it is enacted as follows:—

"107G (1). Land not liable to resumption under section 107E and to which the provisions of section 107H do not apply shall be liable to assessment or enhancement of rent as the case may be.

"(2) When a grant held rent free or at a favourable rate is found to be liable to have rent assessed or enhanced thereon, the grantee shall be deemed to be a tenant without a right of occupancy under sections 36 and 37 of this Act, and the rent shall be determined at such rate as the Court may consider fair and equitable, having regard to the rents paid for land of similar quality and with similar advantages in the neighbourhood.

"(3.) The period of seven years for which he (the grantee) shall be entitled to retain the holding shall begin from the first day of July next following the date of the institution of the suit."

Mauza Bandhia Kalan was not liable to resumption under section 107E, as the term for which the lease was granted has not expired, and it is not proved that any condition contained in the lease has been broken. The provisions of section 107H do not apply in this case, and consequently section 107G does apply, as the lease of the 23rd February, 1891, was a grant of land at a favourable rate of rent, and mauza Bandhia Kalan was land held by the defendant at a favourable rate of rent within the meaning of chapter VII [A] of Act XXII of 1886. The decree of the Board of Revenue which set aside the decree of the Commissioner of Lucknow and restored the decree or order of the Deputy Commissioner of Sitapur enhancing the rent to 2,000 rupees per annum was right.

Their Lordships will humbly advise His Majesty that the decree of the Board of Revenue should be affirmed, and that this appeal should be dismissed with costs.

In the Privy Council.

RANI PARBATI KUNWAR

v.

THE DEPUTY COMMISSIONER OF KHERI AND ANOTHER.

DELIVERED BY SIR JOHN EDGE

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1918.