Privy Council Appeal No. 121 *of* 1917.

Musammat Afzal-un-nisa (in substitution for Haji Allah Bakhsh and others) - - - - - - - - *Appellant*

v.

Abdul Karim and others - - - - - - *Respondents.*

Same - - - - - - - - - *Appellant*

v.

Musammat Latifan and another - - - - - *Respondents.*

Same - - - - - - - - - *Appellant*

v.

Mahomed Sadiq and others - - - - - - *Respondents.*

(*Consolidated Appeals.*)

FROM

THE CHIEF COURT OF THE PUNJAB.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 18TH FEBRUARY, 1919.

Present at the Hearing:

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

[*Delivered by* LORD DUNEDIN.]

The predecessors in title of the appellant in these consolidated appeals raised as plaintiffs three suits of ejectment in respect of three parcels of land held by the respondents, respectively. Questions as to sufficiency of notice were raised, but need not be alluded to. The real question at issue is raised by the defence of each of the respondents, which has been upheld by the Courts below, viz., that they are permanent tenants at a fixed rent

which has admittedly been paid since the beginning of the tenancy, and as such cannot be evicted on the allegation that they are tenants-at-will.

The parcels of land in question are situated in a suburb of Delhi and are covered by buildings of masonry occupied by the respondents. It is admitted that the respondents' predecessors in title were invited to occupy the land for building purposes by the predecessors of the appellant in about the year 1859. No document showing the terms of occupancy is extant, nor is there any reliable oral evidence of what passed at that time. But the facts found, and as to which, indeed, there is no dispute, are that from that time onwards a uniform and fixed rent has been paid, that in some of the receipts given by the landlord the term " permanent " as applied to the rents is used, that the respondents and their predecessors in title have erected substantial buildings without objection on the part of the landlord, that they have dealt with their properties by way of sale and mortgage, and that the properties have passed by succession. In these circumstances the learned judges of the Courts below have held that the case is in substantially the same position as the case of *A. Caspersz* v. *Kader Nath Sarbadhikari and others* (I.L.R. 28. Calcutta. 738). The head-note of that case, which accurately represents what is decided, is in these terms :—

> " Although the origin of a tenancy may not be known, yet if there is proved the fact of long possession of the tenure by the tenants and their ancestors, the fact of the landlord having permitted them to build a *pucca* house upon it, the fact of the house having been there for a very considerable time, of it having been added to by successive tenants, and of the tenure having from time to time been transferred by succession and purchase, in which the landlord acquiesced or of which he had knowledge, a Court is justified in presuming that the tenure is of a permanent nature."

The learned counsel for the appellant was constrained to admit that, if this case had been in Bengal, he could not contend that the judgment was not right, but argued that, though the inference was properly drawn in Bengal, it could not be properly drawn in the Punjab, on the ground that in Bengal there was a permanent settlement, whereas in the Punjab there was not. Now it is clear that an inference as to a fact to be drawn from facts depends on a mental process which is the same all the world over. The argument could, therefore, only be good if it could be shown that a permanent tenancy was a legal impossibility in the Punjab. Counsel candidly admitted that he had no direct authority for the proposition, but argued that it followed from the difference of position as to the permanent settlement. It is not clear to their Lordships why the position in a question with the government should alter the possibility of a bargain as between landlord and tenant, but it is not necessary to give any opinion on the point, and it would be inexpedient to do so in face of the fact that the point was never taken in the pleadings and was consequently not urged before nor noticed by the learned judges in the courts below; it is, therefore, out of the question to raise it before this Board.

Their Lordships may also add that, quite apart from the ground on which the case was decided by the learned judges below, there is another valid ground of judgment. There were produced several sale deeds of superstructure houses on the ground by the plaintiffs' predecessors, in which there was a distinct acknowledgment that the houses themselves were held by the tenant in virtue of a permanent tenancy. This would be an estoppel as against the plaintiffs.

One other point must be noticed. The plaintiffs put forward an alternative demand for enhancement of rent. This was refused by the Subordinate Judge, but was allowed by the Divisional Judge, to whom appeal was taken. The original judgment was restored by the learned judges of the Chief Court. It is not clear to their Lordships upon what view as to jurisdiction the Divisional Judge pronounced the decree he did, but in any case the view of the Chief Court is clearly right, that once it is settled that the original bargain was for a permanent tenancy at a fixed rent all question of enhancement is necessarily gone unless such a proceeding is authorised by statute.

Their Lordships will, therefore, humbly advise His Majesty to dismiss all the appeals. In terms of the condition on which special leave to appeal was granted, the appellant will pay the costs of the respondents before this Board as between solicitor and client.

In the Privy Council.

MUSAMMAT AFZAL-UN-NISA (IN SUBSTITUTION FOR HAJI ALLAH BAKHSH AND OTHERS)

v.

ABDUL KARIM AND OTHERS.

SAME

v.

MUSAMMAT LATIFAN AND ANOTHER.

SAME

v.

MAHOMED SADIQ AND OTHERS.

(*Consolidated Appeals.*)

DELIVERED BY LORD DUNEDIN.

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