
(1887) 01 AHC CK 0004
In the Allahabad High Court

Ajudhia Sahu

APPELLANT

Vs

Autu Singh

RESPONDENT

Date of Decision : 21-01-1887

Acts Referred:

Citation : (1887) ILR (All) 249

Hon'ble Judges : Oldfield, J; John Edge, J

Bench : Division Bench

Final Decision : Allowed

Judgement

John Edge, Kt., C.J.—This is an action to recover the principal, with interest, agreed to be paid under a bond by enforcement of lien. There is no defence to the claim for the principal. The defendant, as to the claim for interest, in effect, alleges that, subsequent to the making of the bond, a jamog was come to, by which the plaintiff agreed to take the rents of certain tenants in satisfaction of the interest, and those tenants agreed to pay those rents to the plaintiff and in consequence of that the defendant agreed to release those tenants from the payment of the rent to him. That I understand to be the meaning of the defendant's pleadings. If that be the state of facts, it will be necessary to consider how far it would affect the plaintiff's claim to recover interest on the bond.

2. Now the Court of First Instance found that the jamog was agreed to, and allowed the plaintiff's claim for the principal only. In the Lower Appellate Court it appears, from the judgment of Mr. Steinbelt, that the agreement as to the jamog was not disputed, but that the plaintiff said that he had never received any of the rent under that jamog. Mr. Steinbelt, taking the view that the jamog would be inoperative unless there were mutation of names in the revenue registers, so as to enable the plaintiff to sue the tenants in the Revenue Courts, hold that the plaintiff was entitled to the interest which he claimed.

3. Now, the effect of the jamog, as I understand it, was this, that it was in fact a

novation, by which the landlord--the defendant here--agreed with his creditor and with his tenants that the liability of the tenants for their rent should be transferred from him to the creditor--that is, he in effect assigned, so far as he could, the rent to the creditor, and the tenants, being parties to that arrangement, agreed that they would pay their rent to the creditor, and not to the landlord, and the creditor on his part agreed to accept that agreement in satisfaction of the interest which would otherwise be payable under the bond.

4. Two points have been urged before us. One is based on the judgment of Mr. Steinbelt--that is, that the plaintiff cannot maintain an action, either in the Civil or the Revenue Courts, on that jamog against the tenants. We are of opinion that it is not necessary for us to consider whether the plaintiff could maintain an action on the jamog in the Revenue Court or not. He can maintain an action in the Civil Court. It has been so held by this Court in the case of *Ganga Prasad v. Chandrawati* I. L. R. AL 256. In that case, in which a tenant had, by writing and with the consent of the landlord, agreed to pay rents to a person other than his landlord, it was held that such other person could maintain an action against the tenant in the Civil Courts for the rents which he agreed to pay to him. I agree with that judgment. It is only necessary to consider whether the fact that the jamog in the present case was not in writing makes any distinction between that case and the present. On that point I have asked the learned pleader for the respondent to show any authority that a novation or assignment of rents, such as in this case, must necessarily be in writing. No authority has been suggested on the point, and certainly Section 131 of the Transfer of Property Act does not contemplate that an assignment of a debt should be in writing to enable the assignee to sue. Therefore I am of opinion that there is no practical distinction between the case to which I have just referred and the present case.

5. It has also been urged that the jamog in question falls within Section 92 of the Indian Evidence Act--that is, that it was a subsequent oral agreement, rescinding or modifying a contract which was registered according to the law in force at the time. In the view which I take of the transaction, I do not think it was an agreement in that sense which rescinded or modified a contract. It was an agreement by which the plaintiff accepted, in satisfaction of interest, a jamog which bound the tenants to pay the rents to him. It would modify the contract no further than if the plaintiff had accepted, for instance, a present cash payment in discharge of all the interest payable on the bond. It is quite clear that the defendant could give oral evidence that the plaintiff had accepted a present cash payment in satisfaction of all the interest that might become payable in future on the bond. For these reasons I am of opinion that the plaintiff is not entitled to maintain his action against the defendant in respect of the interest which was payable under the bond.

6. There is only one further observation which I should like to make: that assuming, as I must assume here, that there was this jamog or novation, the effect of deciding otherwise would be that the plaintiff could still maintain his

action for the interest although in satisfaction of the interest the defendant had parted for the time with his right to recover rents from the tenants. The effect of the novation is that the right of the creditor to recover interest from the defendant is gone.

7. Under these circumstances the appeal must be allowed and the decree of the Court of First Instance confirmed with costs.

Oldfield, J.

8. I entirely concur.