

(1934) 11 AHC CK 0041
In the Allahabad High Court

Muhammad Ismail Khan

APPELLANT

Vs

Jawahir Lal and Others

RESPONDENT

Date of Decision : 30-11-1934

Acts Referred:

Letters Patent Act, 1865 — Section 10

Citation : AIR 1935 All 492

Final Decision : Dismissed

Judgement

1. This is a plaintiff's appeal u/s 10, Letters Patent, his suit having been dismissed by all the Courts so far. The question that we have to decide is whether the defendant, who claims under a lease, obtained a lease in perpetuity, or a tenure that was to subsist for the lifetime of the original lessee Jai Chand. The facts of the case have been given at length in the judgments of the Courts below and of the learned Single Judge of this Court. It has been consistently held so far that the words employed in the lease, coupled with, the surrounding circumstances and the subsequent conduct of the parties, lead to only one, inference, namely, that the lease was perpetual. It is not necessary for us to go in detail into the expressions used in the document, because it is clear that the use of the word *dawam* per se might not imply perpetuity. but in the present case the lessee was given the right to build a house or to let it out on rent to anyone, else. It was further said that the lessee shall have the same right as the lessor enjoyed up till then. It is clear that the lessor had proprietary rights, and She could undoubtedly have granted permanent rights to others. There is no reason why Jai Chand, the lessee, should not be deemed to have the same rights, and that would only be consistent with the idea of the lease being a perpetual lease. It also appears that after the death of Jai Chand, the original lessee, in 1914, the lessor and her successors have been accepting rent from the sons and representatives of Jai Chand. Further, acting upon the aright given to the lessee to build upon the land, costly buildings have come into existence. We are therefore of the opinion that the decision of the learned Single Judge is correct. We therefore dismiss this appeal with costs.