

(1932) 03 AHC CK 0030
In the Allahabad High Court

Musammat Aziz Fatma

APPELLANT

Vs

Mukund Lal and Others

RESPONDENT

Date of Decision : 18-03-1932

Acts Referred:

Transfer of Property Act, 1882 — Section 52

Citation : 139 Ind. Cas. 166

Hon'ble Judges : Pullan, J; Niamat Ullah, J

Bench : Division Bench

Final Decision : Partly Allowed

Judgement

1. The "zamindari" shares of two brothers were put to sale in execution of a simple money decree and purchased by one Haji Muhammad Saleh Khan on the 20th of April 1925. At the time when that sale took place, another person, a mortgagee, had also brought a suit in respect of this property. The mortgagee had obtained a final decree on the 3rd April 1925, and he in his turn put the property to sale. The former purchaser, Haji Muhammad Saleh Khan, received a notice of the impending sale at the instance of the mortgagee on the 2nd September, 1925, and on the 8th September, 1925, Saleh Khan executed a lease of certain plots in favour of one Muhammad Ishaq for 20 years at, what has been held by the learned District Judge to be a favourable rate of rent. On the 28th July 1926, the property was sold again in execution of the mortgagee's decree and was purchased by the present plaintiffs, who filed this suit for a declaration that the lease in favour of Muhammad Ishaq was fictitious and void, for possession of the plots covered by the lease and for a sum of Rs. 750 a year by way of damages.

2. In this second appeal we have to determine the position of the lessee as against the present plaintiffs. We must accept the findings of the District Judge, first, that these plots were let at a low rate of rent and that the land could fetch Rs. 700 a year whereas the lease is only for Rs. 314 a year and secondly, that the lessor executed the lease in order to cause loss to the plaintiff and to favour

unduly the lessee. The lease was executed pendente lite; and a lease execute for 20 years in these circumstances must be taken to be a transfer of property within the meaning of Section 52 of the Transfer of Property Act. The lease was prejudicial to the interests of the present owners of the land and should not be held to be binding upon them. But when we have said this, we have said all that can be said in favour of the present plaintiffs, Whatever may have been the motive which influenced Haji Muhammad Saleh Khan in granting this lease, he was clearly the person authorised to admit the defendant; to the occupation of the land. He was at the time the landlord, and it was his duty to arrange for the cultivation of the land. It is not the fault of a lessee that he received favourable terms from the lessor; and whatever may be the rights conveyed by the lease and however much the land may now be entitled to challenge the terms of that lease, the position of the lessee is that of a tenant. He is not a trespasser and, as a tenant, he has the rights of a tenant which have been given, to him by the Agra Tenancy Act and he can be ejected only under the provisions of that Act. The new Agra Tenancy Act came into force in September 1926, and, when this, suit was brought, the possession of the lessee, Muhammad Ishaq, was u/s 19. of Act III of 1926, that of a statutory tenant. Any proceedings against him by way of ejectment could be taken only in the Revenue Court. The defendant, in his written statement, does not claim to hold to the terms; of the lease, as he accepts his position as a statutory tenant. We have already pointed out that the lease was one which can be challenged by the plaintiffs under the terms of Section 52 of the Transfer of Property Act, and we accordingly think it proper to uphold that portion of the decree of the court below which granted the first relief sought by the plaintiffs, namely, a declaration that the lease is void as against the present plaintiffs, but we can go no further than this. We cannot give a decree for profits, and we cannot order the ejectment of the defendant. These questions must be, determined by the Revenue Court.

3. We, therefore, allow this appeal is part and modify the decree of the court below in the manner specified above. The defendant has succeeded in holding this: land for a period of seven years altogether and for a period of five years against the wish of the "zamindar". In the circumstances of the ease we think it proper to order that the parties shall bear their own costs.