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**(1895) 05 CAL CK 0001**  
**In the Calcutta High Court**

Tara Lal Singh Deo Bahadur

APPELLANT

Vs

Sasi Bhushun Raha

RESPONDENT

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**Date of Decision :** 05-05-1895

**Acts Referred:**

Transfer of Property Act, 1882 — Section 108(j)

**Citation :** (1895) ILR (Cal) 494

**Hon'ble Judges :** Rampini, J; Pigot, J

**Bench :** Division Bench

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**Judgement**

Pigot and Rampini, JJ.—In each of the three suits out of which these appeals arise, the plaintiff sues the defendant No. 1 for rent due under a lease granted by the plaintiff to that defendant. In each case the lease is admitted, the rent is admittedly due, and the only defence is that the defendant No. 1 has assigned to the defendants No. 2 the lease under which the rent has become due.

2. In each case the defendants No. 2 were added as parties defendant, apparently at their request. The Munsif made in each case a decree against the defendants No. 2 alone. On appeal the Subordinate Judge has held (in one judgment disposing of all the cases) that the defendant No. 1 is liable: and has made a decree against him, letting the decree against the defendants No. 2 stand as against them. Defendant No. 1 appeals.

3. In each case kabuliyats only are put in evidence : we are told that no pottahs were executed.

4. In appeal 249 the suit is for rent for one year, from Assin 16th, 1298, to Assin 15th, 1299 : the lease is of the right to cut and take limestone from plaintiff's Mouzah Bagmara at the annual jumma of Rs. 300.

5. In appeal 232 the suit is for rent for one year from Aughran 1298 to Kartik 1299 : the lease is of the right of mining and taking coals in and from the plaintiff's Mouzah Utrara at the annual jumma of Rs. 900.

6. In appeal 250 the suit is for arrears of rent for 1298 and for the Sraban kist of 1299 : the lease is of the right of cutting stones from nine hillocks in Mouzah Nadnara at the annual jumma of Rs. 200.

7. The quarrying lease, that in appeal 250, does not purport to give an interest to the lessee beyond the term of his own life. The two other leases purport to confer the interest for a larger period. In 249 the right is given to the lessee and his heirs; in 232, to the lessee, to his sons, son's sons, and so on in succession.

8. The judgment of the Lower Appellate Court was given in the case concerning the first mentioned lease, that in question in appeal No. 250, in which the lease does not purport to extend beyond the lessee's life. As to all the leases the Lower Appellate Court held that defendant No. 1 could not, by reason of having assigned to the defendants No. 2, claim exemption from liability to pay rent to the plaintiff even if the rent claimed be for a period subsequent to the sale.

9. In all three cases the assignments to the defendants No. 2 were made on the 24th Assar 1298.

10. It is not contended that the plaintiff accepted defendants No. 2 as his tenant, at or after the time of the assignment, or at any time.

11. The case is governed by the provisions of Section 108, Sub-section (j), of the Transfer of Property Act: the lessee may transfer absolutely, or by way of mortgage or sub-lease, the whole or any part of his interest in the property, and any transferee of such interest or part may again transfer it. The lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease. Nothing in this clause shall be deemed to authorize a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer, or lessee." It was argued that this provision must be interpreted with reference to the ordinary law of India with respect to the relation of landlord and tenant at the time the Act was passed. It was contended that, according to that law (described in the argument addressed to us as the "common law" of India), it was competent for the tenant to rid himself of his liability to pay rent by assignment, or at any rate by assignment and notice thereof to his landlord. With reference to this, a construction was urged of the words in Sub-section (j): "the lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease." It was contended that, although the mere transfer would not put an end to the lessee's liability under this provision, notice by the tenant to the landlord of such transfer would, combined with the transfer itself, do so : as this, it was said, was the general rule of law relating to the relation of landlord and tenant in India at the time the Transfer of Property Act was passed.

12. We shall assume, for the purposes of this argument, that in this case such a notice of the transfer as is contended would be sufficient, was in fact given.

Assuming this to have taken place we do not think that under Sub-section (J) the liability of the tenant under the lease would cease by reason of such transfer and such notice.

13. If there was such a common law of India as was contended" for, enabling the tenant to put an end to his liability by transfer and notice (we express no opinion as to whether there was or was not), it did not, at all events, extend to leases of a non-agricultural character such as these: and we think that in this case the sub-section must be construed without reading it as governed by, or interpreted with reference to, any such principle.

14. We must interpret the words of the provision by themselves. The subsection provides that the liability of the lessee shall not cease by reason only of the transfer; and we think that this cannot imply that it may be made to cease merely at his pleasure, upon notice to his landlord. His liability to the landlord is expressly preserved, notwithstanding the transfer : that is to say, the landlord's right to the benefit of his contract with the lessee is expressly preserved to him, unaffected by the transfer itself. We can find nothing in the sub-section itself to countenance the construction of it, that a right so belonging to the landlord may be put an end to without any act or consent on his part and solely at the will of the person on whom the liability rests.

15. We say nothing whatever about agricultural leases : and nothing that we now say can be taken in any way, by implication or otherwise, to suggest any opinion about them, one way or the other. We hold that the liability of the defendant No. 1, the appellant in these appeals, is in no way modified by his transfer to defendants No. 2, or by any notice of it, if he ever gave any, to the plaintiff respondent, and we dismiss these appeals with costs.