

*Privy Council Appeal No. 45 of 1914.*

*Allahabad Appeal No. 18 of 1911.*

**Moti Chand and Others** - - - - *Appellants,*

*v.*

**Khwaja Ikram Ullah Khan and Others** - - *Respondents,*

FROM

**THE HIGH COURT OF JUDICATURE FOR THE NORTH-WESTERN  
PROVINCES, ALLAHABAD.**

---

**JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL, DELIVERED THE 11TH DECEMBER, 1916.**

---

*Present at the Hearing :*

LORD PARKER OF WADDINGTON.

LORD SUMNER.

SIR JOHN EDGE.

SIR LAWRENCE JENKINS.

*[Delivered by SIR JOHN EDGE.]*

---

This is an appeal from a decree, dated the 24th May, 1911, of the High Court of Judicature at Allahabad, which set aside a decree of the Subordinate Judge of Azamgarh, and dismissed the suit of the plaintiffs. The suit was brought to recover damages for an alleged breach by the defendants of an agreement contained in a sale deed of the 2nd May, 1903, by which the defendants had agreed to execute and file a deed of relinquishment of their rights in their "sir" lands in Mouza Khorant, Daulsapur, and Bharthipur, in the district of Azamgarh. The Mouzas in question are mahals within the meaning of "The North-Western Provinces Tenancy Act, 1901" (Act II of 1901).

The defendants, who were the proprietors within the meaning of that Act of Mouzas Khorant, Daulsapur and Bharthipur, and had in those Mouzas considerable "sir" lands in their occupation to which the Act applied, by their deed of the 2nd May, 1903, transferred by sale to the plaintiffs the three Mouzas and all the rights appertaining to the zamindari property. By the deed the defendants also purported to sell to the plaintiffs the zamindari property "together with 'sir' and

'khudkasht' lands, and ex-proprietary tenancy right without the exception of anything or right"; declared that, "we, the executants, have relinquished our claims and interest in respect of all the 'sir' and 'khudkasht' lands"; and agreed that—

"We shall execute a deed of relinquishment of claim in respect of the 'sir' lands, and shall file an application surrendering the holding. If we should make a delay in or take any objection to the filing of an application surrendering the holding or to the execution of the deed of relinquishment of claim in respect of the 'sir' lands, or should we, the executants, our heirs or representatives or successors, keep in our possession any portion of the 'sir' and 'khudkasht' lands, then we and our heirs and representatives and successors shall pay damages in respect thereof at the rate of 16 rupees per bigha. In case of non-payment, the vendees shall have power to bring a suit in a competent Court and to realise the amount of damages at the above rate from the person and property of us the executants, and our heirs and representatives and successors. We, the executants, shall have no objection to pay it."

At the time of the execution of the sale deed of the 2nd May, 1903, the plaintiffs were not nor were any of them proprietors, landholders, or co-sharers in the Mouzas or in any of them.

On the 5th May, 1903, and in pursuance of the agreement in that respect contained in the sale deed of the 2nd May, 1903, the defendants executed a deed of relinquishment, in favour of the plaintiffs, of their claim and right in all their "sir" lands in the three Mouzas; they, however, refused to file the deed of relinquishment in the Revenue Court, and on the 14th July, 1903, refused to quit possession of the "sir" lands, of which they have since then continued in possession as ex-proprietary tenants. In respect of that refusal to file the deed of relinquishment or to quit possession of the "sir" lands, this suit for damages was brought in the Court of the Subordinate Judge of Azamgarh on the 3rd July, 1909. The damages claimed were at the rate of 16 rupees per bigha, amounting to 9,468 rupees 8 annas, with interest thereon at the rate of 8 annas per centum per mensem from the 14th July, 1903, to the 3rd July, 1909. The total amount of the claim, including interest, was Rs. 12,837 : 5 : 9.

The Subordinate Judge gave the plaintiffs a decree for the amount claimed, with costs, and interest thereon at the rate of 8 annas per centum per mensem to the date of realisation. The High Court, on appeal, holding that the transaction as to the "sir" lands, whether it was to be regarded as an attempted sale of ex-proprietary rights or an agreement to relinquish those rights when they should arise, was unlawful, decided that the claim for damages for breach of the agreement could not be maintained, and dismissed the suit. There was abundant authority for that conclusion to be found in the decisions of

the High Court on the effect of Act II of 1901, and of the previous Act XII of 1881.

In Section 10 of Act II of 1901 it is enacted, so far as is material for present consideration, that—

“(1.) Every proprietor whose proprietary rights in a mahal, or in any portion thereof, whether in any share therein or in any specific area thereof, are transferred, on or after the commencement of this Act, either by sale in execution of a decree or order of a Civil or Revenue Court, or by voluntary alienation, otherwise than by gift or by exchange between co-sharers in the mahal, shall become a tenant, with a right of occupancy in his ‘sir’ land, and in the land which he has cultivated continuously for twelve years at the date of the transfer, and shall be entitled to hold the same at a rent which shall be four annas in the rupee less than the rate generally payable by non-occupancy tenants for land of similar quality, and with similar advantages in the neighbourhood.

“(2.) A usufructuary mortgage shall be deemed to be a transfer within the meaning of this section.

\* \* \* \* \*

“(4.) Every such tenant, and every tenant having the same rights under the corresponding provisions of Act XVIII of 1873, Act XII of 1881, or any other enactment for the time being in force, shall be called an ex-proprietary tenant, and, save as otherwise expressly provided, shall have all the rights and be subject to all the liabilities conferred and imposed upon occupancy tenants by this Act.

“(5.) The land in which such occupancy right has been created shall be specified, and the rent payable therefor shall be fixed by the Collector under Section 36 of the North-Western Provinces and Oudh Land Revenue Act, 1901.”

In Section 20 of Act II of 1901 it is enacted :—

“(2.) The interest of an ex-proprietary tenant, an occupancy tenant, or a non-occupancy tenant other than a ‘thekadar’ is, subject to the provisions of this Act, heritable, but is not transferable in execution of a decree of a Civil or Revenue Court, or otherwise than by voluntary transfer between persons in favour of whom, as co-sharers in the tenancy, such right originally arose, or who have become by succession co-sharers therein.”

In Section 83 of Act II of 1901 it is, amongst other things, enacted :—

“(1.) A tenant, not bound by a lease or other agreement for a fixed period, may, at the end of any agricultural year, surrender his holding; but he shall not be entitled to surrender a portion only of his holding.

\* \* \* \* \*

“(3.) Nothing in this section shall affect any arrangement by which a tenant and his land-holder may agree to the surrender of the whole or any portion of a holding.”

The Subordinate Judge apparently considered that clause (3) of Section 83 had some bearing upon the facts of the case. Their Lordships cannot regard the agreement for relinquishment by the defendants in the sale deed of the 2nd May, 1903, and

the execution by the defendants of the deed of relinquishment of the 5th May, 1903, as separate and distinct transactions. The execution of the deed of relinquishment on the 5th May, 1903, was merely a step taken towards giving effect to the agreement for relinquishment which was contained in the sale deed of the 2nd May, 1903, and was not an arrangement between a tenant and his landlord. The relation of landlord and tenant did not exist between the plaintiffs and the defendants at the time when the sale deed of the 2nd May, 1903, was executed.

It appears to their Lordships that it cannot be doubted that the policy of Act II of 1901 is to secure and preserve to a proprietor whose proprietary rights in a mahal or in any portion of it are transferred otherwise than by gift or by exchange between co-sharers in the mahal a right of occupancy in his "sir" lands, and in the land which he has cultivated continuously for twelve years at the date of the transfer, and that such right of occupancy is by the Act secured and preserved to the proprietor, who becomes by a transfer the ex-proprietor, whether he wishes it to be secured and preserved to him or not and notwithstanding any agreement to the contrary between him and the transferee. The policy of the Act is not to be defeated by any ingenious devices, arrangements, or agreements between a vendor and a vendee for the relinquishment by the vendor of his "sir" land or land which he has cultivated continuously for twelve years at the date of the transfer; for a reduction of purchase money on the vendor's failing or refusing to relinquish such lands; or for the vendor being liable to a suit for breach of contract on his failing or refusing to relinquish such lands. All such devices, arrangements, and agreements are in contravention of the policy of the Act and are contrary to law and are illegal and void, and cannot be enforced by the vendee in any Civil Court or in any Court of Revenue.

Their Lordships will humbly advise His Majesty that this appeal should be dismissed with costs.

---



Privy Council.

---

MOTI CHAND AND OTHERS

v.

KHWAJA IKRAM ULLAH KHAN AND  
OTHERS.

---

DELIVERED BY SIR JOHN EDGE.