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his back on the arguments, which one would expect from him at ordinary times and takes to those which would for ordinary purposes be appropriate to the judgment-debtor. This revolutionary method of argument is of course not of a kind which appeals to a Court, for Courts prefer consistency of principle.

I have said what I consider to be the ordinary principle, and all that remains is to consider whether, in this particular decree, there are to be found indications that it is based on that principle or whether it is intended by this particular decree to provide for some different solution of the question, what is to happen on failure to pay an instalment. I have quoted the passage pertinent to the point from the decree and it seems, to me, to be one of an ordinary kind, one which we must interpret by the principle which I have indicated. Therefore, I think that the lower Courts were quite right in dismissing this Darkhast as time-barred, and that the decree of the lower Court ought to be confirmed.

Decree confirmed.

J. G. R.

APPELLATE CIVIL.

Before Mr. Justice Beaman and Mr. Justice Heaton.

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GOPAL JAYVANT SHIRGAONKAR (ORIGINAL PLAINTIFF), APPELLANT *v.* SHRINIWAS VITHAL PAI AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Lease—Assignment of a lease—Repudiation of lessor's title by the original lessee—Forfeiture.

A mere repudiation by the original lessee of the lessor's title will not work a forfeiture against the assignee of the lease.

* Second Appeal No. 206 of 1917.

Per HEATON, J.:—The Transfer of Property Act does recognise that his interest in the property may be transferred by a lessee to an assignee and this may be done without the consent of the lessor and if that can be done it seems to me to follow as a matter of reason that when the entire interest is transferred by the lessee to the assignee, then the assignee is not responsible for acts done by the lessee.

SECOND appeal against the decision of M. B. Tyabji, District Judge of Ratnagiri, confirming the decree passed by V. S. Nerurkar, Subordinate Judge at Vengurla.

Suit to recover possession.

The land in suit belonged to the plaintiff. In 1867 it was rented to the grandfather of defendants Nos. 1 and 2 under a permanent lease. In 1888 the lessee transferred the whole of his interest in the property to the father of defendant No. 3. The rent due from the defendants Nos. 1 and 2 fell into arrears and on a demand being made for it, the defendants denied the plaintiff's title to the land. Hence the suit for recovery of possession of the land and for rent.

Defendants Nos. 1 and 2 did not contest the suit.

Defendant No. 3 pleaded that he held the land as a permanent tenant since 1888 when defendants Nos. 1 and 2 sold the property to him; that he had been paying rent to these defendants; that he had not denied plaintiff's ownership and that the claim for possession against him was not maintainable.

Defendant No. 4 replied that she was an annual tenant of defendant No. 3, that she had not received a notice and that the suit was bad against her.

The Subordinate Judge dismissed the plaintiff's claim for possession but decreed the claim for rent as against defendants Nos. 1 and 2.

On appeal, the District Judge confirmed the decree.

The plaintiff appealed to the High Court.

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V. D. Kamat, for the appellant:—I submit there was a forfeiture of the lease in this case. The lessee denied the lessor's title and the denial works a forfeiture of the lease: section 111 (*g*), clause 2 of the Transfer of Property Act, 1882. The assignee of the lease from the original lessee cannot possess higher rights than the lessee himself. Forfeiture of the lease also annuls the assignment of it. I rely on 2nd para. of section 115 of the Transfer of Property Act, 1882.

Y. N. Nadkarni, for respondent No. 3:—No doubt repudiation of the lessor's title by the lessee works a forfeiture of the lease under section 111 (*g*), clause 2 of the Transfer of Property Act, 1882, but such a repudiation can be of no avail to the lessor, if made after the assignment of the lease by the original lessee, for there is no estate left in the lessee after the assignment which he can repudiate. By the assignment of the lease there is a privity of estate created between the lessor and the assignee and what is left in the original lessee is the contractual obligation to pay the rent. Section 115 of the Transfer of Property Act, 1882, speaks of the annulment of the sub-lease on the forfeiture of the lease. A sub-lease is quite distinct from an assignment of the lease. By a sub-lease a lesser interest is carved out in favour of the sub-lessee, but by an assignment, there is a complete transference of the lessee's interest in favour of the assignee. Undoubtedly the assignee continues to be liable for the payment of the rent along with the original lessee in virtue of the creation of the privity of estate between him and the original lessor.

K. B. Bhave, for respondent No. 4.

BEAMAN, J.:—The plaintiff sued the defendants Nos. 1, 2 and 3 in ejectment as upon a forfeiture for the recovery of the demised land and arrears of rent primarily from defendants Nos. 1 and 2, the plaintiff's lessees, and thereafter generally, should they not be liable, from

whomever the Court should find responsible. The 4th defendant is merely a tenant of defendant No. 3, and we are not concerned with her. The plaintiff's father originally let the land permanently to the grandfather of defendants Nos. 1 and 2, and defendants Nos. 1 and 2 in turn assigned this permanent lease to defendant No. 3. Now, along with the assignment of a lease go all covenants running with the land and there remain only in the assignor personal covenants or obligations which may be enforced against him by the lessor. By such assignments privity of estate is at once established between the original lessor and the assignee of the lease; and should the lessor accept rent from the assignee, then privity of contract is likewise established, and the resulting position is that the original lessee, the assignor, stands liable merely as a surety to the lessor for all the contractual covenants of the lease. I think it follows from this very clearly that mere repudiation by the original lessee of the lessor's title will not work a forfeiture against the assignee of the lease. That is the only ground upon which forfeiture was asked in the present suit. The case will be entirely different where it is a sub-lease, or, as it is called in section 115 of the Transfer of Property Act, an under-lease. But having regard to the change in the legal rights and obligations of the first lessor and lessee upon the assignment of the whole lease, I think it must follow (and this rule must be a rule without exception) that no mere act of the kind complained of by the first lessee can operate so seriously to the prejudice of the assignee of the lease. It is true that some attempt may be thought to have been made to provide against such abuses by the terms of section 115 of the Transfer of Property Act. But since that section, in my opinion, is confined, and intended to be confined, to cases of sub-leases, or under-leases or parting with part of the

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interest under the original lease, the principles which will come into play would be very different from those upon which the rights and obligations of a lessor and the assignee of a complete lease will have to be inquired into and determined. Therefore, I think that the Court below was quite right in rejecting the plaintiff's claim to recover possession of the land as upon a forfeiture. The assignee of the lease has never denied the plaintiff's title and has expressed himself ready and willing to pay all the rent due to the plaintiff under the assigned lease. It is true that he says that he has actually paid that rent to his assignor in the belief that he in turn was passing it on to the original lessor, the plaintiff. It is pretty clear, I think, that the plaintiff did not desire to recover the rent from the assignee thus establishing privity of contract as well as privity of estate between them, and that is the reason, I should think, why matters have been allowed to drift on as they have done. It is also true that the rent is very small, only Rs. 3 a year, and that the plaintiff would doubtless have been very glad to forego it, if by doing so he could have regained possession of the demised land. The decree of the lower Court, however, only allows the plaintiff rent against the original lessees, defendants Nos. 1 and 2. That, in the circumstances, I think, is wrong and that the defendant No. 3 should be made under the decree jointly liable for the arrears of rent. Had he contested the point, it might have needed more consideration, but he does not contest it and his pleader has expressed his readiness to accept joint liability for the arrears of rent decreed against defendants Nos. 1 and 2. That being so, and with that small amendment, I would confirm the decree of the lower appellate Court, but the result would be slightly different since the suit could not be dismissed against defendants Nos. 3 and 4. And the proper order would

be that the plaintiff's suit should be decreed to the extent of obtaining all arrears of rent against defendants Nos. 1, 2 and 3 jointly and that no relief need be awarded against defendant No. 4, and that the suit in so far as it was to recover possession of the land should be dismissed. But the plaintiff should have his costs throughout from defendants Nos. 1 and 2. Defendant No. 3 should pay his own costs, and the plaintiff should pay the costs of defendant No. 4 throughout.

HEATON, J. :—This appeal raises an interesting and an important point. It appears that in 1867 a person, whom I will call the lessor, leased certain property to the lessee. In the year 1888, the lessee transferred absolutely the whole of his interest in the property to the father of defendant No. 3, whom I will call the assignee. Quite recently it happened that the rent was not paid by the lessee and as clause (*j*) of section 108 of the Transfer of Property Act tells us, the lessee was still liable to pay the rent, although he had parted with his interest to the assignee ; though of course he on his part was entitled to recover whatever rent was agreed upon between him and the assignee. However, the rent payable to the lessor fell into arrears, and on a demand for it by the lessor, the lessee repudiated the lessor's title. I think that it is clear in this case that if the only persons concerned had been the lessor and the lessee the latter would have incurred a forfeiture, for a suit brought by a lessor has been held to show his intention to enforce the forfeiture and put an end to the lease. In this case, therefore, it seems to me that there is a clear case of forfeiture as between the lessor and the lessee, were they the only persons concerned. But the defendant No. 3, the assignee, very naturally asserts that at any rate there was no forfeiture of his interest in the property. He has never repudiated the lessor's title, nor has he failed to pay rent demanded from him.

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Both the lower Courts held that there is no forfeiture of the interest of defendant No. 3 and the suit as regards possession has been dismissed, and I think rightly dismissed, for, it is futile to grant a decree for possession against defendants Nos. 1 and 2, the representatives of the original lessees, and it would be wrong to make a decree for possession against defendant No. 3, the assignee. The reason why I think it would be wrong to make such a decree against the assignee is to be found primarily in section 115 of the Transfer of Property Act. I have already referred to clause (*j*) of section 108. That clause empowers the lessee to transfer his interest absolutely, or by way of mortgage, or by sub-lease, clearly recognising these different methods of transfer and the different interests which they cover. Then, we have the general law as to forfeiture which is contained in clause (*g*) of section 111. Then, we come to section 115, the second part of which says that the forfeiture of a lease annuls all underleases except in particular cases which we need not consider. But it does not enact that forfeiture annuls any other kind of transfer by the lessee except the under-lease, and seeing that other kinds of transfers are, as I have pointed out, clearly recognised, I infer that the second part of section 115 designedly confines forfeiture to the case of an underlease. That in itself would, I think, justify the inference that where the lessee has transferred his interest in other ways than by way of underlease the transferee's interest is not forfeited by the act of the original lessee. I cannot find in the Transfer of Property Act anything which seems to me to suggest that this conclusion is erroneous. For instance, if we turn to clause (*e*) of section 111, we find forfeiture provided for where the lessee does certain things, and that word, reading this part of the Transfer of Property Act as a whole, does not seem to me to mean the lessee

or his assignee. Then the provisions about the assignment, to which I have already referred, give the power of assignment and on an assignment the interest of the lessee is vested in the assignee. The general intention of the Act is made clearer still, I think, by the words of section 108, which enacts that the benefit of the lease shall be annexed to, and go with, the lessee's interest as such, and may be enforced by every person in whom that interest is from time to time vested. It seems to me, therefore, clear that the Transfer of Property Act does very emphatically recognise that his interest in the property may be transferred by a lessee to an assignee and this may be done without the consent of the lessor, and if that can be done it seems to me to follow as a matter of reason that when the entire interest is transferred by the lessee to the assignee, then the assignee is not responsible for acts done by the lessee. His responsibilities are those arising out of his acquired interest in the property leased. That being the general conclusion at which I have arrived from a study of the provisions of the Transfer of Property Act, I think that the decrees of the lower Courts were quite correct in refusing to direct the dispossession of defendant No. 3. But as the assignee gets the interest in the property, so also he becomes liable to the obligations attaching to that interest, and one of those obligations is the payment of rent, not merely to the lessee or assignor, but to the original landlord, the lessor, and though the assignee is not under any direct obligation personally to pay the lessor, yet if the rent is not paid, the lessor can demand it not only from his original lessee but also from the person to whom the lessee's interests have been transferred. That seems to me to follow as a matter of reason just as clearly as the other conclusion follows, i.e., that the assignee is not responsible for the acts of the lessee after the lessor has assigned his interest in the property

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Therefore, just as I think that the decrees of the lower Courts were right in refusing a decree of dispossession against defendant No. 3, I think they were wrong in refusing to make defendant No. 3 responsible equally with defendants Nos. 1 and 2 for the arrears of rent. And so I agree with the decree proposed by my learned brother.

Decree amended.

J. G. R.

APPELLATE CIVIL.

Before Mr. Justice Shah and Mr. Justice Marten.

1918. *March* 20.

HANSRAJ LADDASHET (ORIGINAL PLAINTIFF), APPELLANT *v.* ANANT PADMANABH BHAT AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Civil Procedure Code (Act V of 1908), section 92—Suit by a Muktesar of a temple against superseded Muktesars—The superseded Muktesars also trustees of the endowment—Prayers for recovery of property belonging to the temple, mesne profits and for taking accounts of the management—Jurisdiction of Court to entertain suit—Religious Endowments Act (XX of 1863), section 14.

The plaintiff, who claimed to be heir of the original donor and a newly appointed Muktesar of a temple, sued the defendants who were the trustees of the endowment and the superseded Muktesars of the temple, praying for possession of immoveable and moveable properties belonging to the temple, for mesne profits and for accounts. The trial Court being of opinion that the suit was governed neither by section 92 of the Civil Procedure Code, nor by section 14 of the Religious Endowments Act, decreed it on merits. The suit was, however, dismissed by the District Judge on the preliminary ground that the cognizance of the suit was barred by section 92 of the Civil Procedure Code. The plaintiff having appealed :—

Held, that the suit clearly fell within the scope of section 92 of the Civil Procedure Code, inasmuch as taking the plaint as a whole the suit was one for the removal of the defendants from their position as trustees, for the restoration of the trust property to the plaintiff as Muktesar, for taking accounts and for damages for their wrongful acts as trustees.

Held, further, that the defendants were not in the position of strangers, for they were trustees and claimed as such to be entitled to hold the lands from generation to generation subject to the due fulfilment of the trust.

* Second Appeal No. 495 of 1916.