

**(1910) 06 AHC CK 0015**

**Allahabad High Court**

**Case No:** None

Kalyan Singh

APPELLANT

Vs

Man Singh

RESPONDENT

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**Date of Decision:** June 10, 1910

**Citation:** 7 Ind. Cas. 637

**Hon'ble Judges:** Tudball, J

**Bench:** Single Bench

**Final Decision:** Dismissed

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### **Judgement**

Tudball, J.

This appeal arises out of a suit for rent in respect of the year 1316 Fasli brought by the landlord against a tenant. The defence in so far as this appeal is concerned was, that in the year 1315 Fasli the landlord and the tenant came to an arrangement, under which the tenant agreed to surrender the land at the end of the year, and the landlord consented to it, and that, therefore, the tenant was not responsible for the rent of 1316 Fasli.

2. It appears from the findings of the Courts below, that in 1315 Fasli the tenant was in difficulties about his rent, that a third party-intervened, and made an arrangement between the parties, under which the tenant was to cultivate only for 1315 and to relinquish at the end of that year, and the landlord was to consent to that arrangement in consideration of the third party paying up the rent due from the tenant. The rent was so paid by the third party, and the landlord and the tenant both agreed to the arrangement to surrender. It is an admitted fact that in the year 1316 Fasli the tenant did not cultivate the land. As a matter of fact, it lay uncultivated. There was, therefore, a surrender by the tenant. In these circumstances, the lower Courts have dismissed the suit for rent.

3. On appeal it is urged that under Clause (2) of Section 83 of the Tenancy Act, the tenant remained liable for the rent of 1316 Fasli, because he had failed to give the

landlord notice in writing of his intention to surrender before the 1st day of April, and because the landlord had not let the land to another tenant, and had not taken it into his own cultivation or use.

4. It seems to me that in view of the language of Clause (3) of Section 83 and of the actual circumstances of this case as found by the lower Courts, there is no force in this contention. Clause (3) of Section 83 distinctly states that 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. It seems to me that this clause clearly covers a valid agreement which is not vitiated by fraud and which is not contrary to law, and that where such an agreement is arrived at between the parties, and the tenant according to that agreement, surrenders his holding, he is no longer liable for the rent of the succeeding year.

5. Attention has been called to the rulings in *Inayat Ullah v. Jai Lal* A.W.N. (1898) 31 and *Waris Khan v. Daulat Khan* A.W.N. (1902) 201. Both of these decisions were passed in respect of Section 31 of the N.W.P. Rent (Act XII of 1881). This section corresponds to Section 83 of the present Tenancy Act. But a comparison of the two sections will show that Clause (3) of Section 83 finds no corresponding clause in Section 31 of the Rent Act. It is a new addition intentionally made by the legislature. The two rulings quoted, therefore, do not in my opinion, cover the present case.

6. In the case of *Sumera v. Piare Lal* A.W.N. (1905) 201 : 2 A.L.J. 665, the decision, though it relates in a manner to Section 83, is not in point. No question in respect of Clause (3) arose in that case. The question was whether a notice served u/s 85 was valid and binding between the parties, although it had not been established that the landholder had refused to receive any notice u/s 83. Clause (1) of Section 83 gives the tenant the right of surrender. The act of surrender is the act of actually giving up the land. Clause (2) of the section says that notwithstanding such surrender the tenant shall remain liable for the rent of the succeeding year, unless he shall have given to the landholder notice in writing before the 1st day of April. These two portions of the section contemplate a set of circumstances in which the landholder has not agreed or does not agree to the surrender. The proviso to Clause (2) shows that in two sets of circumstances, even though the notice be not given in writing, the tenant will not remain liable for the rent of the succeeding year. Those two sets of circumstances are, first, when the landlord lets the land to another tenant ; and, second, where he takes it into his own possession, cultivation or use. These two acts of the landlord are tantamount to consent to surrender, and, therefore, the tenant has been held free from liability by reason thereof. Immediately after this proviso, we have Clause (3) which shows that nothing in the section can affect any arrangement by which the tenant and the landlord come to actual terms and agree as to the surrender of the holding.

7. It is urged that the policy of law in this matter is that everything should be in writing, in order to prevent the opportunity of fraud and perjury. Whatever may be

the actual policy of the legislature, Clause (3) of the section nowhere lays down that the arrangement arrived at by the landlord and tenant shall be reduced to writing. It will be noticed that the tenant can only legally surrender his holding at the end of an agricultural year. Clause (3) leaves it open to the landlord and tenant to agree orally if deemed for, to a surrender at any time of the year of the whole or any portion of the holding. Practically Clause (3) reserves to the parties freedom to make a contract enforceable by the Courts so long as it is not tainted with fraud, and nothing is done which is contrary to law. In my opinion the lower Courts' decisions were perfectly correct in view of the facts found by them to exist. The appeal, therefore, fails and is dismissed with costs.