

**Debi Prasad Vs. Har Dayal**

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**Court :** Allahabad

**Decided On :** Dec-31-1969

**Reported in :** (1885)ILR7All691

**Judge :** Oldfield and; Mahmood, JJ.

**Appellant :** Debi Prasad

**Respondent :** Har Dayal

**Judgement :**

Oldfield, J.

1. There is no case for appeal. Apart from the question whether executing a mortgage of his holding was an act within the meaning of Section 93 (b) of the Rent Act, on which it is not necessary to express an opinion, the finding is that the mortgage has been cancelled, and there is no cause of action left, and the penalty should not be enforced, with reference to Section 149. The appeal is dismissed.

Mahmood, J.

2. I concur in the order proposed by my learned brother Oldfield, and I am anxious to state my reasons for doing so, because I am aware of several cases in which an occupancy-tenancy has been brought to an end on account of erroneous views prevailing in the Mufassal Courts in regard to the meaning of Clause (b), Section 93 of the Rent Act. But assuming that the use of land by an occupancy-tenant in a manner inconsistent with the nature of his lease would put an end to his tenure, I am of opinion that the execution of a mortgage, such as that in the present case, is not 'any act or omission detrimental to the land in his occupation, or inconsistent with the purpose for which the land was let.' Under Section 9 of the Act, occupancy-rights cannot be transferred; and I have before now said in *Gopal Pandey v. Parsotam Das* I.L.R. 5 All. 121 that the term 'transfer' as used in the section includes all kinds of mortgage, and hypothecation amongst others, and that the mortgage, being prohibited, is null and void. In this case we have a usufructuary mortgage, and this comes within the principle of the ruling of the Full Bench in *Naik Ram Singh v. Murli Dhar* I.L.R. 4 All. 371. For the same reason, the mortgage, being illegal, would have no effect as against the zamindar, being a transaction opposed to the policy of the statute. What Section 93 {b) means by 'any act or omission detrimental to the land' in a tenant's occupation, 'or inconsistent with the purposes for which the land was let,' may be thus illustrated. If an acre is given to a tenant for the purpose of cultivation, and he turns it into a tank, or builds upon it, that, in the view of the law, is an act 'inconsistent with the purpose for which the land was let.' But the execution of a mortgage, as in the present case, is not such an act. It would be illegal and void, but

it would furnish no ground for ejection. The Act does not give authority to end a tenure on any grounds other than those mentioned in the statute itself: in other words, I do not think that the occupancy-tenure can be brought to an end, except upon grounds clearly provided by the law. The appeal should therefore be dismissed.

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