

**Gobind Prasad Vs. Parmanand**

**Gobind Prasad Vs. Parmanand**

**SooperKanoon Citation :** [sooperkanoon.com/475214](http://sooperkanoon.com/475214)

**Court :** Allahabad

**Decided On :** May-31-1920

**Reported in :** AIR1920All128; 57Ind.Cas.589

**Judge :** Piggott and ;Kanhaya Lal, JJ.

**Appellant :** Gobind Prasad

**Respondent :** Parmanand

**Judgement :**

1. The essential facts out of which this appeal arises are as follows: Shammun and Umra were occupancy tenants of certain land at a rent of Rs. 25 per annum. In January 1915 they entered into a contract with one Lala Parmanand, by which they sublet their entire holding to him for a period of five years on certain terms. He paid them down Rs. 200 in advance and in return for this premium he was to have possession of the holding for the period of five years, which is the maximum period limited by Statute, and was thereafter to pay only the annual rent of Rs. 25 to the Zamindars, It is quite true that, in order to keep up the form of a sub-lease, the document further defined that the rent agreed to be paid by the sub-tenant was Rs. 65 annually, Rs. 25 to be paid to the Zamindars and Rs. 40 to the lessors; but it also made it quite clear that the five annual payments of Rs. 40 had all been made in advance. The lease was in substance a premium lease with an annual rent reserved, the transaction as a whole being in some respects similar to a mortgage. In fact there are premium leases executed from time to time which it is

not easy to distinguish from usufructuary mortgages. In the month of July following, when the lessee had only enjoyed possession for about half a year, the occupancy tenants relinquished their holding to the Zamindars. They did so on terms profitable to themselves, receiving consideration in cash from the Zamindars in return for their relinquishment. The question now is, what rent are the Zamindars entitled to recover from Lala Parmanand? The Court of first instance held that, in spite of his having paid down Rs. 200 to his lessors by way of premium, Lala Parmanand became, by reason of the provisions of Section 28 of the Agra Tenancy Act ( II of 1901), liable to pay the Zamindars rent at the full stipulated rate of Rs. 65 per annum. The lower Appellate Court has reversed this finding and has held that, during the period of his lease, Lala Parmanand is only liable to pay the Zamindars at the rate of Rs. 25 per annum. The appeal before us is by the plaintiff Zamindar against this decision. The terms of Section 28 aforesaid do not help the plaintiff. Assuming for the sake of argument that the interest of the occupancy tenants was extinguished for all purposes by their surrender of the holding, the only result is to entitle the Zamindar to the benefit of any existing covenant between the said tenants and their sub tenant. The existing covenant at the date of the surrender was that the sub tenant was under no further liability to pay the tenants anything for the remainder of the period of five years, but was merely to pay Rs. 25 annually to the Zamindar. An attempt has been made to get round this fact by splitting up the covenant of lease into two portions and contending that the taking of Rs. 200 in advance amounts to a mortgage of the holding for a period of five years, and is, therefore, prohibited by the provisions of the Tenancy Act and that only the liability to pay rent at Rs. 65 per annum remains and is binding and enforceable as between the landlord and the subtenant. We do not think it is possible to look at the case in this way. The taking of a premium in connection with the granting of a sub lease is not in terms prohibited by the Tenancy Act, and within the limits imposed by that Act there seems no reasonable objection to tenants entering into contrasts of a sublease which involve the payment of a premium by the sub-tenant on entry. In any case, on the principles laid down by a Full Bench decision of this Court in *Brij Kumar Lal v. Sheo Kumar Missir* 29 Ind. Cas. 215 : 13 A.L.J. 649 : 37 A. 444 it would be very inequitable, even apart from the provisions of Section 33 of the Tenancy Act, to treat the relinquishment by the

tenants under the circumstances stated as operative so as to affect the position of their sub-lessee. From either point of view we think the decision of the lower Appellate Court was right and we dismiss this appeal accordingly with costs.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**