APPELLATE CIVIL

Before K. L. Gosain and Harbans Singh, JJ.

PUNJAB STATE,—*Appellant.*

versus

CHAMAN LAL AND ANOTHER,—*Respondents.*

Regular Second Appeal No: 255 of 1953:

1959

Nov., 25th

Sarais Act (XXII of 1867)—Section 2—Sarai—Meaning of—Section 7—Levy of charges from persons staying in a building meant for the shelter and accommodation of travellers—Whether essential to constitute it a Sarai.

Held, that the whole scheme of the Sarais Act, 1867, shows that the Act is not intended merely to be applicable to *sarais* where charges are levied from the travellers but that the aim and object of the Act is to provide for proper safeguards of the travellers who stay in any *sarai* whether on payment of the charges or otherwise. The mere fact that charges have not to be levied for the stay of travellers in any building would not be enough to hold that the said building although used for the shelter and accommodation of travellers would not fall within the definition of the word "*sarai*" as defined in the Act. The various duties of the keepers of *sarais* as given in section 7 of the Act indicate the protections which the legislature aimed at providing to the travellers, and on principle there should be no difference whether the travellers stay in the building on payment of charges or are allowed to stay there without such payment.

Case referred on 17th March, 1958, by Hon'ble Mr. Justice Gurnam Singh to a Division Bench for interpretation of the definition of the word Sarai as given in Act No. XXII of 1867. It was finally decided by the Division Bench consisting of Hon'ble Mr. Justice Gosain and Mr. Justice Harbans Singh; on 25th November; 1959.

Second Appeal from the decree of the Court of Shri Pitam Singh Jain, Senior Sub-Judge, with Enhanced Appellate Powers; Ambala; dated the 11th day of February, 1953, affirming that of Shri K. K. Gujral, Sub-Judge;

IV Class, Ambala City, dated the 30th October, 1952, granting the plaintiff's a decree as prayed for with costs.

S. D. BAHRI AND A. L. BAHRI, for Advocate-General; for Appellant.

JUDGMENT

The judgment of the Court was delivered by—

Gosain, J.

GOSAIN, J.—These two appeals (Regular Second Appeals Nos. 255 and 257 of 1953), raise the same question of law, i.e., the interpretation of the word "*sarai*" as defined in section 2 of the Sarai Act (Act XXII of 1867) and this judgment will dispose of both of them. They arise out of two different suits—one brought by Radha Sham and others, and the other brought by Shri Chaman Lal and others—both for declaration that the *dharamsala* in each of the two cases was not covered by the definition of "sarai" under the Sarais Act and that the District Magistrate, Ambala, had no jurisdiction to call upon the plaintiffs in each case to get the *dharamsala* in dispute registered as *sarai*. In the suit brought by Shri Radha Sham and others it was alleged that Lala Girdhari Lal and Lala Hazari Lal Khatris, sons of Kashmiri Lal, erected and founded the *dharamsala* known as "Girdhari Lal-Hazari Lal Khatri Dharamsala", Kabari Bazar, Ambala Cantonment, that Lala Girdhari Lal acted as sole trustee in his lifetime, that Lala Hazari Lal had predeceased him, that after the death of Lala Girdhari Lal the plaintiffs have been the trustees of the said *dharamsala* while Shri Radha Sham has been the manager of the same. It was further alleged that the said *dharamsala* was exempted from payment of all Cantonment taxes as well as from the property tax. The District Magistrate addressed a letter to Messrs Radha Sham and Harmohan, owners of the *dharamsala* in question and asked them as keepers of the *sarai* to get it registered under the

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Sarais Act within one month of the receipt of the said notice. The plaintiffs averred that the building in question did not fall within the definition of the word "sarai" inasmuch as it was a *waqf* property and no charges were being levied from the marriage parties and travellers who were allowed to stay in the *sarai* with the permission of the plaintiffs.

In the second suit brought by Shri Chaman Lal and others it was alleged that Smt. Mandan, widow of Lala Baij Nath, erected and founded the *dharamsala* known as "Baijnath Jain Dharamsala", Kabari Bazar, Ambala Cantonment, and by means of a registered will, dated the 19th March, 1928, appointed the plaintiffs as trustees, that as desired by the founder the building had been in use for stay of the travellers as well as for stay of the marriage parties and holding of public meetings and gatherings, etc., that no charges were levied from any of the persons using the building in question, that the building was exempt from payment of Cantonment taxes as well as from the property tax, that the building in question did not fall within the definition of the word *"sarai"* as given in the Sarais Act, that the District Magistrate, Ambala, by his memorandum No. 52-M, dated the 4th January, 1951, required the plaintiffs to get the *dharamsala* registered a *sarai* under section 4 of the Sarais Act and thereafter the District Magistrate required Shri Chaman Lal, plaintiff No. 1, as manager of the Sarai to obtain certificate of good character in the form appended with his letter and to send the same to his office, and that the aforesaid acts of the District Magistrate were without jurisdiction.

Both the suits were contested on behalf of the State of Punjab who pleaded that the building did

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fall within the ambit of definition of the word "*sarai*" and the District Magistrate was in each case entitled to issue the notices in dispute. The trial Court decreed both the suits on the finding that the building in each case was not a "*sarai*" as defined by the Sarais Act. The learned Senior Subordinate Judge upheld the decree of the trial Court in both the cases. The second appeals of the Government in this Court came up for hearing before Gurnam Singh, J., who by his order, dated the 17th March, 1958, referred them to a hearing by the Division Bench.

The only point that falls for decision in these two appeals is whether the buildings in question do fall within the ambit of the word "*sarai*" as defined in section 2 of the Sarais Act, Act XXII of 1867. The said definition runs as under:—

> "'*Sarai*' means any building used for the shelter and accommodation of travellers, and includes in any case in which only part of a building is used as a *sarai*, the part so used of such building. It also includes a *purao* so far as the provisions of this Act are applicable thereto."

It is not disputed by the plaintiffs in either of the two cases that the buildings in dispute are used for the shelter and accommodation of travellers and the said buildings, therefore, *prima facie* do fall within the ambit of the definition of the word "*sarai*". In section 2 of the Act the words "keeper of a *sarai*" are defined. Section 3 of the Act provides that the District Magistrate may give to the keeper of every *sarai* a notice in writing requiring the keeper to register his *sarai* as provided by the Act. Section 4 provides for a register *of sarais* to

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be maintained. Section 5 of the Act provides that if and when a notice to register a *sarai* has been issued by the District Magistrate, the keeper of any *sarai* shall not receive any lodgers, etc., to halt in the *sarai* till the same has been registered. Section 6 of the Act gives a discretion to the Magistrate of the District to refuse to register as the keeper of a *sarai* a person who does not produce a certificate of character in such form and signed by such person as the State Government may prescribe. Section 7 gives in detail the duties of keepers of the *sarais* and is in the following terms:—

"The keeper of a *sarai* shall be bound—

(1) when any person in such *sarai* is ill of any infectious or contagious disease, or dies of such disease, to give immediate notice thereof to the nearest police station;

(2) at all times when required by any Magistrate or any other person duly authorised by the Magistrate of the District in this behalf, to give him free access to the *sarai* and allow him to inspect the same or any part thereof;

(3) to thoroughly cleanse the rooms and verandas, and drains of the *sarai* and the wells, tanks, or other sources from which water is obtained for the persons or animals using it, to the satisfaction of, and so often as shall be required by, the Magistrate of the District, or such person as he shall appoint in this behalf;

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(4) to remove all noxious vegetation on or near the *sarai*, and all trees and branches of trees capable of affording to thieves means of entering or leaving the *sarai;*

(5) to keep the gates, walls, fences, roofs and drains of the *sarai* in repair;

(6) to provide such number of watchmen as may, in the opinion of the Magistrate of the District, subject to such rules as the State Government may prescribe in this behalf, be necessary for the safety and protection of persons and animals or vehicles lodging in, halting at or placed in the *sarai;* and

(7) to exhibit a list of charges for the use of the *sarai* at such place and in such form and languages as the Magistrate of the District shall from time to time direct."

Section 8 enables the District Magistrate to order reports on certain matters from the keepers of the *sarais*. Section 9 empowers the District Magistrate to take certain actions with regard to deserted *sarais* and sections 10 and 11 empower him to take actions in respect of *sarais* which are in a ruinous state or are likely to fall down and which are dangerous to the persons and animals lodging in the same. Sections 12 and 14 provide for penalties in cases where the keepers of *sarais* offend against the provisions of the Act. The whole scheme of the Act as detailed above shows that the Act is not intended merely to be applicable to *sarais* where charges are levied from the travellers but that the aim and object of the Act is to

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provide for proper safeguards of the travellers who stay in any *sarai* whether on payment of the charges or otherwise. The view of the two Courts below that the buildings were not *sarais* simply because charges were not being levied in the same for the stay of travellers does not seem to us to be correct. There is no doubt that under sub section (7) of section 7 one of the duties of the keeper of a *sarai* is to exhibit a list of charges for the use of *sarai* in such place and in such form and languages as the Magistrate of the District may from time to time direct. This sub-section, however, cannot govern the definition of the word '*sarai*', and can only be interpreted to mean that the keeper of the *sarai* shall exhibit the list of charges if and and when any have to be made. The mere fact that charges have not to be levied for the stay of travellers in any building would not be enough to hold that the said building although used for the shelter and accommodation of travellers would not fall within the definition of the word "*sarai*" as defined in the Act. The various duties of the keepers of *sarais* as given in section 7 of the Act do indicate the protections which the legislature aimed at providing to the travellers, and on principle there should be no difference whether the travellers stay in the building on payment of charges or are allowed to stay there without such payment.

In our judgment both the buildings in question which admittedly provide shelter and accommodation to travellers do fall within the ambit of section 2 of the Act and the District Magistrate had complete jurisdiction to issue the impugned notice in each of the two cases.

In the result, we accept these appeals and setting aside the decrees and judgments of the two

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Courts below dismiss the plaintiffs' suits. In the peculiar circumstances of the case, however, we leave the parties to bear their own costs in this Court.

I agree.
R. S.

APPELLATE CIVIL.

Before D. K. Mahajan, J.

GOBIND AND OTHERS,—*Appellants.*

versus

CHHAJJAN AND OTHERS,—*Respondents.*

Regular Second Appeal No. 201 of 1955.

1959

Nov., 25th

Contract Act (IX of 1872)—Section 62—Novation of a contract—meaning of—Giving up a part of the mortgaged property—Whether amount to novation.

Held, that novation of a contract means that for an existing contract a new contract is substituted and the new contract implies concurrence of both the parties to the contract. If there is no such concurrence, there can be no novation. By giving up a part of the mortgaged property, there is no question of a new agreement or contract between the mortgagee and the mortgagor. In such circumstances it cannot be held that there is novation of the contract nor does a change in the security necessarily imply novation.

Second Appeal from the decree of the Court of Shri A. S. Gilani, Senior Sub-Judge, with Enhanced Appellate Powers, Gurgaon; dated the 9th Decemer, 1954, reversing that of Shri Banwari Lal, Sub-Judge 1st Class, Palwal; dated the 1st June, 1954 and granting thep plaintiff a decree for a declaration as prayed for with costs throughout against the contesting defendant.

P. C. PANDIT, *for Appellants.*

J. N. SETH, for Respondents.

JUDGMENT

Mahajan, J.

MAHAJAN, J.—The short question in this second appeal is whether by giving up a part of the property mortgaged there is novation of the contract of mortgage.