APPELLATE CIVIL.

Before Mitter J.

RADHU HARI

v.

NARENDRA NATH CHATTERJI.*

1928.

Dec. 14.

Rent—Agreement to do 'begar' work for rent, whether opposed to public policy, indefinite and arbitrary—Contract Act (IX of 1872), s. 23—Bengal Land Revenue Sales Regulation (V of 1812), s. 3—Bengal Tenancy Act (VIII of 1885), s. 74.

An agreement reserving rent in the form of '*begar*' or gratuitous work to be done by the tenant for 12 days every year is not opposed to public policy under section 23 of the Contract Act (IX of 1872); '*begar*' rent is not an arbitrary or indefinite cess within the meaning of section 3 of Regulation V of 1812; section 74 of the Bengal Tenancy Act (VIII of 1885) does not apply to cases of this description.

SECOND APPEALS by defendants, Radhu Hari and others and Shyam Hari and another.

These appeals arose out of two suits for rent of two plots of land, one of which was *chaukidari chakran* land, taken settlement of by the plaintiffs, and the other appertained to plaintiffs' *patni taluk*. The plaintiffs' case was that the defendants were in possession of their lands by doing "*begar*" (gratuitous) work for 12 days every year in lieu of rent. The defendants having failed to do *begar* work for the period in suit, the plaintiffs claimed Rs. 6 per year for the price of 12 days' *begar* work from the defendants in either suit with damages at 25 per cent. The defendants challenged the legality of the claim, denied relationship of landlord and tenant, and alleged that the price of *begar* work claimed was excessive. The Munsif, relying on the record-of-rights which showed that *chaukidari* and other lands

* Appeals from Appellate Decrees, Nos. 2614 and 2615 of 1927, against the decrees of Gopal Chandra Basu, Offg. Subordinate Judge of Asansole, dated June 27, 1927, modifying the decrees of Phanindra Kumar Sinha, Additional Munsif of Asansol, dated Aug. 25, 1926.

of the locality including the disputed lands were settled with tenants on *begar* rent, found in favour of the plaintiffs and decreed the suits with damages and costs, but reduced the rate claimed to Rs. 2-4 per year. On appeal by the defendants, along with which the plaintiffs preferred a cross-objection, the Subordinate Judge upheld the findings of the Munsif, but modified the decree as to the rate, increasing it to Rs. 3 per year.

The defendants, thereupon, appealed to the High Court.

Mr. Bankimchandra Mukherji and *Mr. Tarapada Banerji*, for the appellants.

Mr. Gopendranath Das, for the respondents.

MITTER J. These two appeals are by the defendants and arise out of two rent-suits commenced by the plaintiffs-respondents. The plaintiffs prayed for recovery of rent at the rate of Rs. 6 and damages at 25 per cent. The case of the plaintiffs is that their predecessor took settlement of the *chaukidari chakran* lands to which the disputed lands appertain and that the defendants are in possession of these lands by doing gratuitous work or *begar* for 12 days every year in lieu of rent. The defendants contested the suit and amongst other defences they raised the contention that the suit for rent could not be maintained, as the stipulation to work for 12 days in the year was arbitrary and indefinite and is opposed to the provisions of section 3, Regulation V of 1812. The trial court held that the agreement to do *begar* work for 12 days has been established in both the cases and decreed the suit at the rate of Rs. 2-4 a year in each of these suits. The lower appellate court has taken the same view.

In Second Appeal by the defendants, it has been contended that such an agreement, namely, to do *begar* in lieu of rent is contrary to public policy and should not be given effect to. It is said that such a contract contravenes the provisions of section 23 of

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the Contract Act. It is also argued that as the contract to do work for 12 days in the year is indefinite and arbitrary such an imposition cannot be made under section 3 of Regulation V of 1812. All that section 3 lays down is that no arbitrary and indefinite imposition could be made in addition to rent, such impositions being in the nature of *abwabs*. Section 74 of the Bengal Tenancy Act says that "all "impositions upon tenants under the denomination "*abwab*, *mathat* or other like appellations, in addi- "tion to the actual rent, shall be illegal, and all "stipulations and reservations for the payment of "such shall be void." There is nothing in Regulation V of 1812 to suggest that there cannot be a valid agreement by which in lieu of rent the tenant may agree to perform certain services. There is nothing indefinite in the contract, for all that is required of the tenant is work for 12 days in the year. It is not known, it is true, whether 12 days are at the option of the tenant or at the option of the landlord. It has been contended, as I have already said, that section 3 of Regulation V of 1812 should be so construed as not to legalise the imposition of the arbitrary rent of this description. It appears, however, that the section of the Regulation to which I have referred altered certain of the provisions of Regulation VIII of 1793 which laid down that where *abwabs* were consolidated with the *asil jama* into one specific sum, such *abwabs* could be realised. Besides there is authority for saying that cases of this description are governed not by the Bengal Tenancy Act but by the Transfer of Property Act. The tenures are really in the nature of service tenures and I am not satisfied that they are contrary to public policy and are in any way illegal. Such contracts are not unknown in this country.

In the circumstances, I think, the view taken by the courts below is right and these appeals must be dismissed with costs.

Appeals dismissed.

A. A.