APPELLATE CIVIL.

Before Guha and M. C. Ghose JJ.

SATEESHCHANDRA PAL

v.

HRISHEEKESH LAW.*

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June 10, 13, 15.

Landlord and Tenant—Suspension of rent—Onus of proof, if shifted on to the landlord by reason of decision in previous suit.

In a suit for rent, where the defendant claims suspension on the ground of dispossession from a portion of the tenancy, the onus is always on the defendant to prove dispossession and the extent of the eviction, even though suspension on the same ground has been allowed in a suit for rent for the previous period. In the latter case, the defendant must prove that the earlier dispossession continues down to the period in suit. This onus can never be shifted on to the plaintiff to show whether the defendant had been restored to possession of the portion of the tenure complained of.

Purna Chandra Sarbajna v. *Rasik Chandra Chakrabarti* (1) distinguished.

The question of eviction must be decided on the facts and circumstances of each particular case before the court, irrespective of the decision in a previous case.

Arun Chandra Singha v. *Shamsul Huq* (2), *Durga Prasad Singh* v. *Rajendra Narayan Bagchi* (3), *Smith* v. *Maling* (4) and *Salts* v. *Battersby* (5) referred to.

SECOND APPEAL by the defendant.

The relevant facts are stated in the judgment.

Jogeshchandra Ray, *Panchanan Ghosh*, *Durgadas Ray* and *Jateendranath Mitra* for the appellant.

Narendrachandra Basu and *Nalinchandra Pal* for the respondent.

Cur. adv. vult.

*Appeal from Appellate Order. No. 321 of 1931, against the order of A. Ray, Addl. District Judge of Midnapore, dated June 29, 1931, reversing the order of Bhujagendra Mustaphi, First Subordinate Judge of Midnapore, dated Dec. 20, 1930.

(1) (1910) 13 C. L. J. 119.
(2) (1931) I. L. R. 59 Calc. 155.
(3) (1913) I. L. R. 41 Calc. 493; L. R. 40 I. A. 223.
(4) (1608) Cro. Jac. 160; 79 E. R. 140.
(5) [1910] 2 K. B. 155.

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GUHA J. The history of the case, giving rise to this appeal, has been set out in detail in the judgment of the court below, and it is not necessary to recapitulate the same for the purpose of the appeal now before us, excepting the fact that, in a suit for rent for a previous period, 1329 to 1332 B.S., it was held that the defendant-appellant in this appeal was dispossessed from 120 *bighâs* of land out of the total area of 2,877 *bighâs* comprised in the tenure, in respect of which rent was claimed by the plaintiff-respondent. The claim in the suit, out of which this appeal has arisen, was for realisation of arrears of rent for the years 1334 to 1336 B.S., as also for the period from *Aswin* to *Chaitra* 1336 B.S., there was also the claim for cesses and damages. The defendant-appellant in this Court contested the plaintiff's claim on various grounds. The defence, with which we are concerned in this appeal, is the one which related to the dispossession by the plaintiff from a part of the tenure, disentitling him to recover rent as claimed in the suit. The point for determination raised by the trial court, on this part of the case, was whether the defendant had been "restored to "possession of the portion of the tenure complained "of". According to the trial court, it was for the plaintiff to show whether the tenant's grievance had been remedied by taking effective steps to restore the tenant to possession of the lands. This was said with special reference to an observation made by this Court in *Reshee Case Law* v. *Satish Chandra Pal* (1). The parties to it were the same as those in the appeal before us now. The learned Subordinate Judge, in the trial court, observed that the evidence on plaintiff's side was far from convincing, and he was not satisfied that the defendant's possession had been restored. The decision of the trial court was against the plaintiff, and it was held that the rent claimed in the suit "must remain in suspension" till the defendant was proved to have been put into possession of the lands from which he had been

(1) (1930) 35 C. W. N. 46, 51.

dispossessed. On appeal by the plaintiff, the learned Additional District Judge considered that the point for decision in the appeal was whether the defendant was entitled to obtain suspension from payment of rent on the ground of alleged dispossession by the plaintiff for the period in suit. The learned Judge observed that, for the defendant to succeed, he must prove that the earlier dispossession of which mention was made by the trial court, continued down to the period in suit. The court of appeal has then come to the finding that the plaintiff did not appear to have realised any rent from any under-tenant during the period in suit, the clear implication being that there was no dispossession by the landlord in respect of any part of the tenure during the period for which rent was claimed from the tenant in the suit out of which this appeal has arisen. The learned Additional District Judge has, upon the findings, arrived at by him, on the materials before him, held that the defendant had not been kept out of possession of any portion of the demised premises by the plaintiff, and that he was "not entitled to "obtain suspension for payment of rent". The case was remanded to the trial court for decision of other questions arising upon the defence of the tenant defendant relating to the *kists* by which rent was payable, and the payment of cesses and damages as claimed by the plaintiff. The defendant has appealed to this Court.

It must be noticed at the outset that, in view of certain observations in the judgment of this Court in a case to which reference has been made above, the learned Subordinate Judge in the trial court had placed the onus of proof entirely on the plaintiff to prove that the tenant had been restored to possession of the lands in respect of which there was dispossession by the landlord at a previous period. The observations made by this Court were in consonance with the view expressed by this Court from time to time upon the facts and circumstances

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of particular cases in which the question of suspension of rent arose on account of dispossession by landlord in respect of the whole or a part of the demised premises; but the question remains that dispossession as alleged by the tenant in any particular case, must relate to the period for which rent was claimed by the landlords. It would not be right to lay down as a proposition of law generally that the dispossession found in a previous suit should be deemed as against the landlord to continue up to the time of the institution of the subsequent suit for rent, and that there was any presumption against him which it was for the landlord to rebut by proof of facts showing that effective steps had been taken to restore the tenant to possession of the lands from which he was found to have been dispossessed in a previous litigation. The decision of this Court in the case of *Purna Chandra Sarbajna* v. *Rasik Chandra Chakrabarti* (1), on which very great reliance was placed on behalf of the appellant before us, does not strictly bear out the general proposition. As has been pointed out in that case, whether there has been an eviction or not depends upon the particular circumstances of each case. The tenant's right to suspension of rent continues, as it has been held in many cases, till effective steps are taken by the landlord to restore him to possession. Although the proposition has been stated in a general form in some of those cases, Mookerjee J. in *Purna Chandra Sarbajna's* case (1) mentioned above went into the question of eviction arising for consideration in the case before him, for the purpose of deciding the same in favour of the tenant. The question of eviction must, in our judgment, be decided on the facts and circumstances of the particular case before the court, irrespective of the decision in a previous case, on the question of dispossession, if the landlord seeks to recover rent on the footing that the tenant was in possession of the

(1) (1910) 13 C. L. J. 119.

entire area demised, as he has done in the case before us. It is difficult to appreciate the applicability of the rule of *res judicata* in regard to dispossession during the period of suit in a case of this description. The question of the burden of proof, however, as has been urged on behalf of the appellant, is a very material question in such a case, although it may very well be said in the case before us, all the relevant facts were before the court below, and it has drawn its own inference on those facts, and held against the defendant in the suit: the question of onus was not, therefore, of importance. On principles and rules of general application, as also upon the authority of decisions of Courts in England, to which reference has been made by Sir George Rankin C. J., in delivering the judgment of the Full Bench of this Court in the case of *Arun Chandra Singha* v. *Shamsul Huq* (1), there appears to be no doubt that the onus is upon the tenant to prove eviction, and the extent of such eviction, where the plea of such eviction is raised with a view to disentitle the landlord to realise rent in its entirety. As indicated by the learned Chief Justice in his judgment, the decision of the Judicial Committee of the Privy Council in *Durga Prasad Singh* v. *Rajendra Narayan Bagchi* (2) supports the view that the onus was on the tenants to make out a case, if they had one, for abatement of rent. It may be mentioned that nothing more than abatement or apportionment could be decreed in favour of the appellant in the suit, out of which this appeal has arisen, if eviction in respect of any area could be made out by him. A lessee claiming apportionment must prove the value of the land withdrawn from the demise, ascertained on the date of such withdrawal. The burden of proof lay upon the tenant: the landlord in such a case was not a person who was prosecuting an equitable claim to an apportionment; he was a person to whose legal claim to an entire

(1) (1931) I. L. R. 59 Calc. 155. (2) (1913) I. L. R. 41 Calc. 493; L. R. 40 I. A. 223.

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rent, the tenant was, in law, entitled to make out what was in law a defence to a part of the claim. So far as the tenant was concerned it was a plea of partial discharge from his covenant; and it followed, therefore, that it must be made good by the tenant, as the covenant was admitted. [See *Smith* v. *Maling*(1), *Salts* v. *Battersby* (2).] There was a single plea to be taken and substantiated by the tenant, a single issue to be tried; and there could not be any shifting of onus in such a case.

In our judgment, there is no question of any particular direction by this Court binding upon the parties in this case as indicated by the trial court; there is no question also of the application of the rule of *res judicata* so far as the tenants' plea of partial eviction and consequent suspension of rent, so far as the period in suit were concerned; the onus was upon the tenant to make good his defence, independently of the decision in the previous suit for rent, in regard to a previous period; the decision in the previous suit might be treated as evidence in favour of the defendant. Examined from whatever point of view, either on the footing that the onus was upon the tenant defendant to make out his case of suspension or apportionment of rent, or judged from the standpoint that upon the entire evidence before the court, the final court of facts has come to the finding negativing the defence of the tenant defendant, the landlord plaintiff's claim for rent for the period in suit must be allowed. The learned Additional District Judge, in the court of appeal below, directed himself rightly in stating that in the present suit it had to be found independently of the dispossession proved in the previous suit for rent, whether the dispossession continued in fact during the period for which rent was claimed; and we must accept his finding that the defendant appellant had not been kept out of possession of any portion of the demised premises.

(1) (1608) Cro. Jac. 160; 79 E. R. 140.

(2) [1910] 2 K. B. 155.

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In the result, the decision arrived at by the learned Judge in the court of appeal below and the order of remand made by him are affirmed. The appeal is dismissed with costs. The hearing fee in this appeal is assessed at three gold mohurs.

M. C. GHOSE J. I agree.

Appeal dismissed.

A. A.