APPELLATE CIVIL.

Before Nasim Ali J.

1934

May 8, 10.

JASHODAKUMAR RAY CHAUDHURI

v.

ABDUL RAHMAN.*

*Under-*râiyat*—Lease, expiry of—Continuous holding of land for 12 years—Status—Trespassers—Ejectment suit—Landlord—Repealing Act, Effect of—Bengal Tenancy Act (VIII of 1885), ss. 48C, 188.*

Where certain under-*râiyats* had been in possession of the land in suit for a continuous period of 12 years partly before and partly after the Bengal Tenancy Amendment Act of 1928 came into force, but their under-*râiyati* lease had come to an end before the new Act came into operation,

held that they could not, therefore, be considered as under-*râiyats* at the time when the new Act came into force and, consequently, the proviso in section 48C would not apply to them, for before the new Act came into operation the landlords had acquired the right to eject them.

Any right accrued under a repealed enactment cannot be affected by a repealing enactment unless a different intention, either express or implied, appears in the repealing enactment.

Section 48C has not been made retrospective expressly : proviso (*1*) clause (*2*) of that section does not show that, by necessary intendment of the repealing enactment, the provisions of section 48C are to be applied retrospectively.

Jeebankrishna Chakrabarti v. *Abdul Kader Chaudhuri* (1) explained and distinguished.

The position would be different, if the under-*râiyati* lease expired after the new Act came into operation, as in that case, on the date the Act came into operation, the defendants would be under-*râiyats* and consqeuently they would be entitled to get the benefit of the proviso to section 48C.

Under-*râiyats*, whose lease has expired, are mere trespassers.

A suit for ejecting a trespasser is not a suit which is authorized by the Bengal Tenancy Act and the right to bring such a suit arises under the general law ; in consequence, section 188 would not apply to a suit for ejecting a trespasser.

Lachmi Lal v. *Ganesh Chamar* (2) referred to.

*Appeals from Appellate Decrees, Nos. 1911 to 1913 of 1931, against the decrees of Kaliprasanna Bagchi, Third Subordinate Judge of Tippera, dated Jan. 27, 1931, affirming the decree of Enayetur Rahman, Second Munsif of Chandpur, dated Jan. 15, 1930.

(1) (1933) I. L. R. 60 Calc. 1037.

(2) [1932] A. I. R. (Pat.) 259 ; 140 Ind. Cas. 14.

SECOND APPEALS by the plaintiffs.

The facts of the cases and the arguments in the appeals appear sufficiently in the judgment.

Bhagirathchandra Das for the appellants.

No one for the respondents.

Cur. adv. vult.

NASIM ALI J. These three appeals arise out of three suits for ejectment. The plaintiffs' case in all the suits is that the defendants held the disputed lands as under-*râiyats* under the plaintiffs, that the terms of the under-*râiyati* leases had expired, that the defendants were, therefore, not entitled to remain in possession of the lands after the expiration of the terms of the leases. The defence in all the suits was that, though the terms of their under-*râiyati* leases had expired, the defendants were entitled to remain on the land by virtue of the provisions of section 48C of the new Bengal Tenancy Act. In Second Appeal No. 1911 arising out of Suit No. 63 there was another objection on behalf of the defendants, that the suit for ejectment was not maintainable as all the landlords had not joined in the suit.

The courts below have concurred in dismissing the suits. Hence the present appeals by the plaintiffs.

It has been found by the courts below that the terms of the under-*râiyati* leases expired before the Bengal Tenancy (Amendment) Act of 1928 came into operation. There cannot be any doubt, therefore, that before the new Act came into operation, the defendants were trespassers on the land and that the plaintiffs had acquired the right to eject the defendants from the disputed land. Now the question is whether the defendants acquired a new right under the amending Act of 1928, or, in other words, whether the plaintiffs' existing right to eject these defendants from the disputed land was taken away by the amending Act. The provisions of

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section 48C, so far as they are relevant to the matter under consideration, are as follows:—

> An under-*râiyat* shall, subject to the provisions of this Act, be liable to ejectment on the ground that the term of his lease has expired, when he holds the land under a written lease; provided that an under-*râiyat* shall not be liable to ejectment on the ground that the term of his lease has expired, if the under-*râiyat* has been in possession of his land for a continuous period of twelve years whether before or after or partly before and partly after the commencement of the Bengal Tenancy (Amendment) Act of 1928 or has a homestead thereon.

In the present case, the defendants have been found to be in possession of the land for a continuous period of twelve years partly before and partly after the Bengal Tenancy (Amendment) Act came into operation. The question, therefore, is whether, under these circumstances, the defendants are entitled to the benefit of the proviso. It seems to me that they are not, because the proviso definitely lays down that they must be under-*râiyats* when the new Act came into operation. The defendants' under-*râiyati* right came to an end before the new Act came into operation. They could not, therefore, be considered as under-*râiyats* at the time when the new Act came into force. Consequently, the proviso, in terms, would not apply to them. Again, before the new Act came into operation, the landlords acquired the right to eject these defendants. Under section 6, clause (*c*) of the General Clauses Act (X of 1897) and section 8, clause (*c*) of the Bengal General Clauses Act of 1899, which have codified the well-established rules of construction relating to the retrospective operation of statutes in England, any right accrued under a repealed enactment cannot be affected by a repealing enactment unless a different intention appears in the repealing enactment. This intention may be either express or implied. There is no doubt that section 48C has not been made retrospective expressly. Again the proviso (*i*), clause (*2*) of that section does not justify the contention that, by necessary intendment of the repealing enactment, the provisions of section 48C are to be applied retrospectively. Therefore, in my

judgment the right acquired by the landlords under the old law, that is, the existing right to eject the defendants has not been touched by section 48C of the Bengal Tenancy Act. This view is not inconsistent with the observations of the learned Chief Justice in the case of *Jeebankrishna Chakrabarti* v. *Abdul Kader Chaudhuri* (1), namely, that "the case "contemplated by the old section 49, clause (*a*) and "new section 48C, clause (*c*) will require to be "decided upon other lines", inasmuch as those observations are confined to the case of a written under-*râiyati* lease for a definite term expiring *after* the commencement of the new Act. In this case, as already observed, the term of the lease expired before the new Act came into operation. The position would be different, if the under-*râiyati* lease expired after the new Act came into operation, as in that case, on the date the Act came into operation, the defendants would be under-*râiyats* and, consequently, they would be entitled to get the benefit of the proviso to section 48C. The defendants are, therefore, liable to be ejected on the ground that they are now trespassers on the land in suit.

In Second Appeal No. 1911 another objection was taken by the defendants that the suit was not maintainable, inasmuch as the entire body of the landlords did not bring the suit, or, in other words, section 188 of the Bengal Tenancy Act is a bar to the present suit. Section 188 of the Bengal Tenancy Act lays down :

> Where two or more persons are joint landlords anything which the landlord is under this Act required or authorised to do must be done either by both or all those persons acting together, or by an agent authorised to act on behalf of both or all of them.

Therefore, it is clear that it must be shown that the institution of this suit is required or authorised by the Bengal Tenancy Act. As stated above, the defendants are mere trespassers on the land. A suit for ejecting a trespasser is not a suit, which is

(1) (1933) I. L. R. 60 Calc. 1037, 1040.

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authorised by the Bengal Tenancy Act. The right to bring such a suit arises under the general law. Consequently, section 188 would not apply to a suit for ejecting a trespasser [See *Lachmi Lal* v. *Ganesh Chamar* (1).]

The next question for consideration in this appeal, that is, in Second Appeal No. 1911, is whether the plaintiffs are entitled to claim *khâs* possession of the 16 annas share of the holding in suit. It has been found by the courts below that, by the *kabuliyat* Ex. (a), the shares of the plaintiffs Nos. 1 to 3 were resettled with the defendants after the expiration of the terms of the lease. Mr. Das, appearing on behalf of the appellants, contended that the *kabuliyat*, Ext. (a), simply shows the settlement of the share of plaintiff No. 1. In view of the findings of the courts below, I am not prepared to hold that the share of plaintiff No. 1 only was resettled by Ex. A. Plaintiffs Nos. 1 to 3, therefore, will not be entitled to get any relief in this suit.

The result, therefore, is that Second Appeal No. 1911 is allowed in part and the suit, out of which the said appeal arises, is decreed in part. The plaintiffs in the said suit, other than the plaintiffs Nos. 1 to 3, will get a decree for joint possession to the extent of their shares along with the defendants in that suit.

The other two appeals, *i.e.*, Second Appeals Nos. 1912 and 1913 are also allowed. The judgments and decrees of the courts below are set aside and the suits, out of which those appeals arise, are decreed in full.

The plaintiffs in all the appeals will get their costs in the trial court as well as in the lower appellate court. There will be no order for costs so far as these Second Appeals are concerned, as the respondents have not appeared in any of these appeals.

(1) [1932] A. I. R. (Pat.) 259 ; 140 Ind. Cas. 14.

Appeals allowed.

G. S.