PRIVY COUNCIL.

SADASHEO

v.

VITHOBA.

P. C.*
1929

Oct. 17;
Nov. 22.

[ON APPEAL FROM THE COURT OF THE JUDICIAL COMMISSIONER, CENTRAL PROVINCES.]

Tenure—Permanency of—Tenant ejected before operation of Act—Civil suit for declaration—Limitation—Berar Alienated Villages Tenancy Law, 1921, ss. 47,74, 75†.

If a tenant, to whom the Berar Alienated Villages Tenancy Law, 1921, section 47, sub-section (*1*) applies, has been ejected by the landlord, before January 1, 1922, when that Act came into operation, he is by section 47, sub-section (*1*) to be deemed to be a permanent tenant of the land and he can bring a civil suit and obtain a declaration that he is so. Section 74, which provides for proceeding by application to a revenue officer, merely gives a summary remedy ; and the period of limitation enacted by section 75 applies, only in the circumstances stated in that section. If the tenant voluntarily ceded possession, section 47 does not apply.

APPEAL (No. 42 of 1928) from a decree of the Court of the Judicial Commissioner, Central Provinces (July 11, 1925), reversing a decree of the Additional District Judge, Amraoti, which affirmed a decree of the Munsif's Court.

Respondent No. 1 brought a suit against the appellant, alleging that he and his predecessors had, for a period of about 50 years, cultivated certain fields, of which the appellant was the landlord, and that he had been wrongfully ejected during 1921. He prayed for a declaration that he was a permanent tenant under section 47 of the Berar Alienated Villages Tenancy Law, 1921, and for possession. The other respondents, whom the appellant had put into possession, were joined as defendants.

The appellant, by his written statement, admitted that respondent No. 1 had been in possession since

**Present :* Viscount Dunedin, Lord Darling, Lord Tomlin, Sir George Lowndes and Sir Binod Mitter.

†This Act was promulgated by the Governor-General in Council under the Indian (Foreign Jurisdiction) Order, 1902.

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before 1895, but alleged that he had voluntarily given up possession. He pleaded further that the above Act did not apply, as the possession had terminated before January 1, 1922, when the Act came into force; he also pleaded limitation.

The Additional District Judge, affirming the Munsif, held that, as the plaintiff was not holding the land when the Act came into operation, section 47 did not apply. An issue, whether the plaintiff had surrendered the fields voluntarily or had been forcibly dispossessed, therefore, was not determined.

The Judicial Commissioner, upon a further appeal, stated that the appeal had been argued upon the assumption that there had been a forcible dispossession. In his opinion, section 47, sub-section 1 applied and the suit was not barred by section 75. He, accordingly, made a decree as prayed.

Dunne K. C. and *Parikh*, for the appellant.

The respondent did not appear.

The judgment of their Lordships were delivered by

VISCOUNT DUNEDIN. This is an appeal *ex parte*. The suit was brought by the first respondent, who does not appear, in March, 1923, in the Court of the Munsif of Kelapur, against the appellant, who is his landlord, to have it declared that he is permanent tenant of certain fields by virtue of the provisions of the Berar Alienated Villages Tenancy Law, 1921. By section 47 of that Act, which came into force on the 1st January, 1922, it is provided that—

> A tenant, other than an ante-alienation tenant or a sub-tenant, who, at the commencement of this Law, has either by himself or by himself and through his predecessor in title, sub-tenant or mortgagee in possession, held land continuously from a date previous to the 1st day of June, 1895, shall, notwithstanding any agreement to the contrary executed prior to the commencement of this Law, be deemed to be a permanent tenant of such land.

Admittedly the first respondent has held the fields continuously from a date prior to the 1st January, 1895, up to the spring of 1921. In March, 1921, the appellant gave him notice to quit. What followed

after that is a matter of controversy. The appellant says that he voluntarily quitted the fields in April. The first respondent says that he did not do so, but was forcibly and wrongfully ejected in May. The sections of the Act to which reference has been made, beside section 47, are sections 74 and 75; they are in the following terms :—

74. Any tenant who has been ejected from his holding or from any portion thereof otherwise than in accordance with this Law, or whose holding has been treated as abandoned under section 37, may, on application to a revenue officer made within one year from the date on his ejectment, or from the first day of the agricultural year next after the entry by the landlord, as the case may be, be reinstated in possession of such holding or portion thereof :

75. Any tenant who has been ejected on or after the 1st day of January, 1916, from his holding or any portion thereof, under decree or order of a civil court, and who, if he had not been so ejected, would be deemed under section 47 to be a permanent tenant thereof, may apply to a revenue officer, within one year from the commencement of this Law, to be reinstated in possession of such holding or portion thereof.

The Munsif took the view that section 74 only applied to ejectment after the Act, and that the only reinstatement which could bring with it permanent tenancy was section 75. He, therefore, considered it unnecessary to decide the controverted question of fact as to which he had granted an issue.

Appeal was then taken to the Court of the District Judge, who took the same view and dismissed the appeal.

The appeal was then taken to the Court of the Judicial Commissioner. He held that it had been practically admitted that the plaintiff had been forcibly dismissed and that, upon that assumption, he held that the plaintiff still held the land, although he had not cultivated or possessed it, and he gave a declaration of permanent tenancy as craved.

From this judgment this appeal is taken.

Their Lordships think that the view as to the law of the Judicial Commissioner is substantially right. They do not think that the matter depends on either section 74 or 75, but only on section 47. Section 74 gives a summary remedy; section 75 deals with another state of affairs altogether. But the true view depends upon section 47, and in their Lordships' opinion a

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person, who being a tenant, is forcibly dispossessed, is still a tenant holding land. But the learned Judicial Commissioner erred in assuming that the question of forcible dispossession was ceded. It was not; and a separate issue as to this had been framed, although, owing to the view of the learned Judges in the courts below as to sections 74 and 75, it was not disposed of. The case must, therefore, go back, in order to have the disputed question of fact decided. If the plaintiff was forcibly dispossessed, he was a tenant in terms of section 47; if he voluntarily ceded possession, after receiving the notice, he had no such right and the action must be dismissed.

Their Lordships will humbly advise His Majesty that the appeal ought to be allowed, the decree of the Court of the Judicial Commissioner discharged, and the case referred back in accordance with the directions given above.

The costs already incurred and to be incurred in the courts in India should abide the result of the further proceedings there, and there should be no costs of this appeal.

Case remitted.

Solicitor for appellant: *H. S. L. Polak.*