APPELLATE CIVIL.

Before Suhrawardy and Jack JJ.

GOBINDAKUMAR SUR

v.

MOHINIMOHAN SEN*.

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April 10.

Court-fee—Suit for ejectment against tenant whose tenancy has been terminated by notice to quit—Question of title in ejectment suit—"Tenant", meaning of—Court-fees Act (VII of 1870), s. 7, cl. xi, sub-cl. (cc).

A suit for ejectment against a tenant, whose tenancy has been terminated by a notice to quit, is governed by section 7, clause xi, sub-clause (*cc*) of the Court-fees Act, 1870. The word "tenant" in the clause means an ex-tenant. The words "including a tenant holding over," after the word "tenant" amplify the meaning of the term "tenant" rather than restrict it.

What the court is entitled to do under this clause is to find if there was relationship of landlord and tenant between the plaintiff and the defendant and if the defendant's tenancy has been validly terminated. If any question of title is raised in the suit, it can only be gone into for the purpose of determining the main question in the suit about the relationship between the plaintiff and the defendant. The proper course would be to dismiss the suit when it is found that there was no contract of tenancy and not to convert it into a suit of another nature—a declaratory and possessory suit.

Karnani Industrial Bank v. *Satya Niranjan Shaw* (1) and *Ramcharan Singh* v. *Sheo Dutta Singh* (2) referred to.

Govinda Ram Agarwalla v. *Dulu Pada Dutt* (3) distinguished and dissented from.

SECOND APPEAL by the plaintiffs, Govindakumar Sur and others.

The appeal arose out of a suit for ejectment. The plaintiffs' case was that the premises in question, which was a building in the town of Dacca, was in the occupation of defendants Nos. 1 to 3, who were monthly tenants and whose tenancy had been determined by a notice to quit, and that the defendant No. 4 was a sub-tenant under the other defendants. The suit was valued for the purpose of court-fee at Rs. 456, being the twelve months' rent payable by the

*Appeal from Appellate Decree, No. 2552 of 1928, against the decree of Daibaki Lall Sen Gupta, Subordinate Judge of Dacca, dated Aug. 4, 1928, reversing the decree of Narendra Nath Sen Gupta, Munsif of Dacca, dated Jan. 31, 1928.

(1) (1928) I. L. R. 56 Calc. 80; L. R. 55 I. A. 344.
(2) (1922) I. L. R. 2 Pat. 260.
(3) (1928) 32 C. W. N. 1113.

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tenant defendants at the rate of Rs. 38 a month. The defendants Nos. 1 to 3 contested the suit, but the Munsif decreed it with costs. The defendants Nos. 1 to 3 appealed against the decree and, when the appeal was taken up for hearing by the Subordinate Judge, a petition was filed on behalf of the defendants asking the court to formulate and try an issue on a preliminary point, *viz.*, as to whether the plaint was under-valued and, if so, whether the Munsif had jurisdiction to entertain the suit. The Subordinate Judge gave effect to the plea raised by the defendants and held that the suit was under-valued as it should have been valued at the market value of the premises and not at the annual rent and in that case it might exceed the pecuniary jurisdiction of the trial court. He, therefore, remanded the case to the Munsif's court for determination of the questions of valuation and jurisdiction.

The plaintiffs, thereupon, appealed to the High Court.

Mr. Brajalal Chakravarti and *Mr. Ramendrachandra Ray*, for the appellants.

Dr. Saratchandra Basak and *Mr. Manmathanath Das Gupta*, for the respondents.

SUHRAWARDY J. This is an action in ejectment by the plaintiff-appellants after service of notice to quit on the tenant-defendants. The case is that defendants Nos. 1 to 3 were holding under the plaintiffs, as monthly tenants-at-will, a building in the town of Dacca, described in the plaint. The defendant No. 4 was a sub-tenant under the tenant-defendants. The plaintiffs served a notice to quit upon them but the tenant-defendants refused to vacate and hence the present suit. The suit was valued at Rs. 456, being the twelve months' rent payable by the tenant-defendants at the rate of Rs. 38 a month. It was tried by the Munsif and decreed in favour of the plaintiffs. The defendants Nos. 1 to 3 appealed and an application was made before the Subordinate Judge who heard the appeal to formulate an issue and to try it

as a preliminary issue regarding the valuation of the suit and the jurisdiction of the Munsif in the trial court. The learned Subordinate Judge gave effect to this plea in bar and held that the suit was undervalued, that it should have been valued according to the market value of the property in suit and that it was possible that, on a proper valuation of the property in suit, the Munsif would have had no jurisdiction to try it. In this view, he remanded the case to the trial court for determination of the allied questions of valuation and jurisdiction.

The plaintiffs have appealed and it is argued on their behalf that the view of the law taken by the learned Subordinate Judge as regards the valuation of the suit is wrong. Objections are also raised with regard to the legality of the order of remand and the propriety of the objection as to the valuation and jurisdiction taken at the appellate stage of the litigation. It is not necessary to consider the other objections, as, in my judgment, the appeal succeeds on the main question in the case relating to valuation and jurisdiction.

The learned Subordinate Judge has held that in a suit as the present it is necessary that the suit should be valued according to the market price of the property, his reasons being that, as soon as the notice to quit was served upon the tenants, the tenancy was determined and the tenants became trespassers; and the suit against trespassers should bear *ad valorem* fees under section 7, clause v of the Court-fees Act, It is contended on behalf of the appellants that the valuation put by them is correct under section 7, clause xi (*cc*).

The learned Subordinate Judge appears to have been greatly influenced by a decision, which was not then properly reported and which had appeared in the short notes of 32 C. W. N. (at p. clx). Before considering the decision I should like to refer to the words of section 7, clause xi (*cc*). They are " for the reco-"very of immoveable property from a tenant, includ-"ing a tenant holding over after the determination of

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"a tenancy," the suit should be valued "according to " the amount of the rent of the immoveable property " to which the suit refers, payable for the year next "before the date of presenting the plaint." This clause contemplates a suit by the landlord against a tenant. The words "including a tenant, *etc.*," after the word " tenant " amplify the meaning of the term " tenant " rather than restrict it. But it has been held by the Subordinate Judge that as soon as a notice to quit is served upon the tenant he ceases to be a tenant and, therefore, this clause does not apply to a case like this. This argument seems to be absurd on the face of it. So long as a person remains a tenant, the landlord has no right to recover immoveable property from him. His right to do so arises only when the relationship between him and the tenant has ceased and the tenant has lost his right to remain in possession of the property. I can conceive of no case in which the landlord can recover immoveable property from the tenant *qua tenant*, *i.e.*, when the tenancy subsists. It is half-heartedly argued on behalf of the respondents that there may be a case in which a tenant encroaches upon the landlord's land and the landlord brings a suit for recovery of that land from the tenant. Such a case, according to the respondent, would be covered by section 7, clause xi (*cc*). In such a case, the suit will be a suit for recovery of possession of property and has to be valued at its market price. It cannot be governed by clause xi (*cc*) as a suit under that clause is to be valued at the rent payable for the year next before the date of presenting the plaint. It is evident that, in the case of an encroachment by a tenant, there will be no rent payable to the landlord in respect of that land. It is, therefore, clear that the word " tenant " in that clause means an ex-tenant, that is, a person who was a tenant, but has now ceased to be so. This view is supported by a decision of the Judicial Committee with reference to the word used in the Calcutta Rent Act. Under section 15 of that Act, a certificate should be granted by the Controller on the application

made to him by "any landlord or tenant." It was argued before their Lordships that the appellant bank having ceased to be tenants at the time when they made the application, as their term had expired by forfeiture or effluxion of time, they were not competent to make an application under that law. Their Lordships observe: "Their Lordships are of opinion "that this adopts a too narrow construction of the "words. In order to give any working effect to the "Act it is necessary that the words 'landlord' and "'tenant' must include, as they often do in ordinary "parlance, ex-landlord and ex-tenant. An action by "an ex-landlord against an ex-tenant might ordi-"narily be described as an action of the landlord "against the tenant." *Karnani Industrial Bank* v. *Satya Niranjan Shaw* (1). Such also is the law in England, where summary procedure has been provided for recovery of property from a tenant who has ceased to be a tenant. To put any other meaning to the word "tenant," as used in that clause, will be to impute to the legislature the futile work of passing a law which can never be applied to any concrete case. In my judgment, the question seems to be so clear that no authority is required in support of it. This view has also appealed to other Courts where the question came up for consideration. In *Ramcharan Singh* v. *Sheo Dutta Singh* (2), the learned Chief Justice held that the word "tenant" in section 7, clause xi (*cc*) includes a person to whom that description would apply immediately before the commencement of the suit, but who is liable to ejectment by reason of the termination of the tenancy.

Now to come to the case on which the learned Judge has relied for the view that he adopted, reported in the short notes, 32 C. W. N. clx. That case has, since the judgment of the Subordinate Judge, appeared in the reports portion of the

(1) (1928) I. L. R. 56 Calc. 80 (86); L. R. 55 I. A. 344 (350).

(2) (1922) I. L. R. 2 Pat. 260.

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Calcutta Weekly Notes as *Govinda Ram Agarwalla* v. *Dulu Pada Dutt* (1) decided by Cammiade J., sitting singly, in which the learned Judge is reported to have held that a suit for recovery of property from a person whose tenancy has been terminated by notice is not covered by section 7, clause xi, sub-clause (*cc*) of the Court-fees Act. According to the accepted canon of interpretation of judicial decisions, every decision must be examined with reference to, and is an authority on the facts of, that particular case. In that case, the suit was brought against the defendant by a person claiming to be the landlord of the tenant-defendant and the suit was valued according to section 7, clause xi (*cc*). The plaintiff was a transferee from the original landlord. The defence was that the plaintiff's vendor had entered into a contract for the sale of that property to the tenant before the sale to the plaintiff and that a suit for specific performance of that contract was then pending. Further, the plaintiff in that suit had brought a rent suit against the tenant which had failed up to the High Court on the objection of the tenant. In these circumstances, the plaintiff could not bring a suit for ejecting the defendants after notice to quit. The decision, therefore, of that case that the suit was not covered by section 7, clause xi (*cc*) may be justified, though, in my opinion, the proper course would have been to dismiss the suit when it was found that there had been no contract of tenancy between the parties and not to convert it to a suit of another nature—a declaratory and possessory suit—the cause of action in the two suits being different, giving rise to different issues. But the learned Judge, in his judgment, has not confined himself to the facts of the particular case, though it must be assumed that they were before his mind's eye when he pronounced his judgment. He observes " Once the tenancy has been determined, the " person who was a tenant becomes a trespasser on " holding on and he could only be a tenant holding " over provided that such holding over was with the

(1) (1928) 32 C. W. N. 1113.

"consent, express or implied of the landlord." Further on he adds, "It seems as if there can be no "room for holding that the legislature intended to "include under the term 'tenant' persons who had "ceased to be tenants altogether." If these words were intended to be of general application, I respectfully disagree from the view taken by the learned Judge. As I have already discussed this question, I need not repeat the arguments in support of my view. The learned Judge has also referred to the words "including the tenant holding over" in that clause as indicating that the word "tenant" used therein means only the person who still bears the character of a tenant. It is not necessary to consider why these words are put there and for what purpose; but it appears that it was to clear a general impression that, on the expiration of the term, the tenant ceases to be a tenant and becomes a trespasser. The law of landlord and tenant, however, allows some rights and privileges to a tenant holding over after the termination of the term, including rights and liabilities under the expired lease, if the holding over is recognised by the landlord. But the clause, as it stands, is to be interpreted according to the simple words used therein, namely, that it includes all sorts of tenants including a tenant who continues to be in occupation after the termination of his tenancy. In that sense, the expression holding over may not carry its technical meaning as given to it by law. It will be disastrous if the law is held to be that the landlord, whenever his tenant refuses to vacate, has to bring a suit for declaration of title and possession, for, in that view, a person as owner will be involved in constant litigation with his tenants refusing to vacate. As the facts in *Govinda Ram's case* may justify the decision of that case, it is neither necessary nor desirable to refer the question raised in this suit to a Full Bench. I am, accordingly, of opinion that the suit as brought by the plaintiff was properly and correctly valued and that the Munsif, who tried the suit, had jurisdiction to try it.

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I now proceed to deal with the contentions urged before us on behalf of the respondents. The first point argued is that a portion of the property in the occupation of the defendants was not, according to the plaintiff, included in the original tenancy and, therefore, the plaintiffs must bring a suit for declaration of title and possession. The plaintiff's case is that defendants Nos. 1, 2 and 3 were successors of their tenant, who was in occupation of the building described in schedule *kha*. The tenant had included within his tenancy rooms described in schedule *ga*. The plaintiffs, therefore, claim to eject the defendants not only from the property mentioned in schedule *kha*, but also from that mentioned in schedule *ga*, which formed, by the act of his tenant, a part of the tenancy. It is not the defendant's case that the old tenant or the defendants set up any right in themselves with regard to the property in schedule *ga*. The learned Munsif, in dealing with this point, has remarked: "Although the plaintiffs do not in so many words "call the defendants-tenant over the *ga* schedule prop-"erty, the effect of the entire plaint is that they "admit the defendants to be tenants over both *ga* and "*kha* schedule lands together, the case as made in the "plaint being that the room in schedule *ga* was "possessed by the old tenant as included in her "tenancy and there was no question of title raised "with regard to that schedule.".

The second contention is that, as defendant No. 4 was made a defendant in the suit, it cannot be said to be a suit governed by section 7, clause xi, sub-clause (*cc*). It is not necessary to discuss, in this case, the effect on the frame of the suit of the inclusion of defendant No. 4 in the category of defendants. In view of the decisions in the cases of *D. E. D. J. Ezra* v. *J. E. Gubbay* (1) and *Ramkissendas* v. *Binjraj Chowdhury* (2), the question might assume some importance if it were urged in a proper case in a proper manner. In this case, the defendant No. 4 did not enter appearance either in the trial court or

(1) (1920) I. L. R. 47 Calc. 907. (2) (1923) I. L. R. 50 Calc. 419.

in the lower appellate court; nor is he present before us at the hearing of the appeal. He has taken no interest in this matter, probably under the idea that a decision against the tenant-defendants will be binding upon him, as has been held in the case of *Ramkissendas* v. *Binjraj Chowdhury* (1). But, assuming that defendant No. 4 is not a proper party in this litigation, what is the effect of joining him as a defendant? The most that the defendant could claim was to have the suit dismissed as against him. But he could not compel the plaintiff to convert his suit into a suit for declaration of title and possession. The suit as framed must stand or fall on the allegations made therein and the character given to it by the plaintiff. It is a suit brought by the landlord against his tenants. If the court holds that there is no relationship of landlord and tenant between the plaintiff and any of the defendants, the proper course is to dismiss the suit as against that defendant. But there is no provision in the law, that I am aware of, which will entitle the court to compel the plaintiff to change his suit into one of another nature. Moreover, it does not sound proper in the mouth of defendants Nos. 1 to 3, who have been found to be the tenants of the plaintiffs, to say that there is a defendant in the suit who is not a tenant and, therefore, the suit cannot proceed in its present form.

The third point raised by Dr. Basak on behalf of the respondents is that, in this case, the plaintiffs raise the question of title to the property, and, therefore, it should be valued as a title suit. The plaintiffs no doubt have given a detail of their title in the plaint and they thought it necessary to do so, as the defendants or their predecessors had not attorned to them, but to the persons from whom they derived their title. In the prayer portion, however, they did not pray for declaration of title or recovery of possession on such declaration, but confined their claim to the eviction of the defendants. As has been held in *Balasidhantam* v. *Perumal Chetti* (2), in a suit brought

(1) (1923) I. L. R. 50 Calc. 419. (2) (1914) 27 Mad. L. J. 475.

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under section 7, clause xi (*cc*), a court cannot enter into the question of title and give a decree on the basis thereof. What the court is entitled to do, under that clause, is to find if there was relationship of landlord and tenant between the plaintiff and the defendant and if the defendant's tenancy has been validly terminated. If it finds any of these elements non-existent, the suit must be dismissed. If any question of title is raised in the suit, it can only be gone into for the purpose of determining the main question in the suit about the relationship between the plaintiff and the defendant.

It is also contended that the defendants having set up a title in themselves, the suit must be treated as one for establishment of title and possession. The nature of a suit depends on the case made in the plaint and not on the defence taken. In suits for rent or actions in ejectment, questions of title are often raised and determined, but that is done for the purpose of deciding the main issue relating to the relationship of landlord and tenant between the parties. If the defence succeeds in showing title in itself, the suit fails, as the relationship is not proved; if it fails, that relationship is established.

A preliminary objection is taken by Dr. Basak, on behalf of the respondents, that no appeal lies from the order of remand by the lower appellate court. It is not necessary to determine this question which has not yet been finally settled, because, if no appeal lies, we can interfere with the wrong order of remand under section 115 of the Code of Civil Procedure.

The result of all these considerations is that this appeal must be allowed, the decree of the lower appellate court set aside and the case remanded to that court for determination on the merits. The appellants are entitled to their costs in this Court, but the costs of the lower courts will abide the result.

JACK J. I agree with the judgment which has just been delivered by my learned brother. Another point of view, from which we arrive at the same result,

has been well put by the Judicial Commissioners in the case of *Vithaldas* v. *Ghulam Ahmad* (1), as follows:—"The claim in a suit must be regarded "with reference to the facts existing when the cause of " action accrued, not to the state of things when the " suit was filed. Up to the moment he gives rise to a " cause of action by refusing to quit on demand, a " tenant is still a tenant, and that is the point of time " to which the suit for his ejectment in consequence " of that refusal must be referred. If it were correct " to look at the facts as they stood when the suit was " filed in this connection, there could be no such thing " as a suit for the ejectment of a tenant, and " clause xi (*cc*) of section 7 of the Court-fees Act, " which was added to it in 1905, would be futile along " with practically all the provisions of the law in " regard to the ejectment of tenants." It has been pointed out to us by the learned advocate for the appellants that the word "tenant" is similarly used in section 108 of the Transfer of Property Act and in section 139 of the Limitation Act with reference to a man who has ceased to be a tenant if the alleged facts are established.

The view taken in the case of *Govinda Ram Agarwalla* v. *Dulu Pada Dutt* (2) by Cammiade J., that, in such cases, section 7 *v* of the Court-fees Act is applicable, was also adopted in the cases of *Narayan* v. *Tukaram* (3), and *Champat* v. *Balakdas* (4), but the view we have taken was followed in *Ramcharan Singh* v. *Sheo Dutta Singh* (5), *Lala Sriram* v. *Jagat Narain* (6), *Punyamurthulu Venkata Rattama* v. *Ghalasani Sreeramulu* (7) and *Mohan Lal* v. *Bhuteshwar* (8).

Appeal allowed.

A. A.

(1) (1926) 99 Ind. Cas. 438.
(2) (1928) 32 C. W. N. 1113.
(3) [1923] A. I. R. (Nag.) 310.
(4) [1925] A. I. R. (Nag.) 131.
(5) (1922) I. L. R. 2 Pat. 260.
(6) (1926) 93 Ind. Cas. 291.
(7) (1926) 99 Ind. Cas. 981.
(8) [1925] A. I. R. (All.) 142.