

## APPELLATE CIVIL.

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*Before Edgley J.*

KRISHNA KANTA GHOSH

v.

RAJESHWAR GHOSH.\*

1936

Aug. 13, 14.

*Landlord and Tenant—Under-rāiyat—Ejectment—Possession for a continuous period of twelve years, how calculated—Bengal Tenancy Act (VIII of 1885), s. 48C, cl. (d) and prov. (i), cl. (2).*

In computing the period of twelve years' continuous possession by which an under-rāiyat is protected under prov. (i), cl. (2), from ejectment on the grounds specified in cls. (c) and (d) of s. 48C of the Bengal Tenancy Act, the period covered by the ejectment notice should be included.

*Jeebankrishna Chakrabarti v. Abdul Kader Chaudhuri* (1) referred to.

Neither s. 15 (2) of the Limitation Act nor s. 185 of the Bengal Tenancy Act operates so as to exclude from the benefit of the proviso to s. 48C of the Bengal Tenancy Act any period covered by the ejectment notice, and, if the under-rāiyat's right as regards non-liability to ejectment has already accrued, the landlord's right to institute an ejectment suit against him is effectively barred, whenever such suit may be instituted.

SECOND APPEAL by the defendants.

The facts of the case and the arguments in the appeal are sufficiently stated in the judgment.

*Girija Prasanna Sanyal and Gopendra Krishna Banerji* for the appellants.

*Hemendra Chandra Sen and Nirmal Kumar Sen* for the respondents.

\*Appeal from Appellate Decree, No. 321 of 1936, against the decree of Santosh Sheel Banerji, Subordinate Judge of Dinajpur, dated Dec. 21, 1935, reversing the decree of Tarani Kanta Nag, First Munsif of Balurghat, dated May 21, 1934.

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EDGLEY J. In the suit, out of which this appeal arises, the plaintiff sought to eject the defendants from an under-*rāiyati* holding under s. 48C of the Bengal Tenancy Act. The main defence of the defendants was that they had been in continuous possession of the land in suit for more than 12 years and this defence was accepted in the Court of first instance.

The lower appellate Court held that the period of 12 years' continuous possession by which an under-*rāiyat* is protected from ejectment on the grounds specified in cls. (c) and (d) of s. 48C of the Bengal Tenancy Act must exclude the period covered by the ejectment notice; and, in this view of the case, the learned Subordinate Judge reversed the decision of the first Court.

It appears from the facts as stated in the judgments of the Courts below that, on May 2, 1920, Krishna Bandhu Ghosh, the father of the present defendants, died. It had been contended in the first Court on behalf of the defendants that the possession of Krishna Bandhu Ghosh in respect of the disputed land before his death should accrue to the advantage of the defendants in order to give them the benefit of the proviso to s. 48C of the Bengal Tenancy Act. But in this Court no argument was advanced before me on this point, in view of the fact that the learned advocate for the appellants admits that the legal position would be doubtful with regard to the possession of the disputed land prior to the death of Krishna Bandhu Ghosh and he bases his case entirely on his argument to the effect that the lower appellate Court's interpretation of s. 48C (d) of the Bengal Tenancy Act is wrong.

It would appear that the plaintiff served the defendants with an ejectment notice on January 20, 1932. This notice admittedly expired at the end of the following agricultural year, namely, on April 17, 1933, and the suit out of which this appeal arises was instituted on May 8, 1933.

The learned advocate for the respondents contended faintly that in any event the defendants had not been in possession of the land in suit for a continuous period of 12 years even on the date on which the suit was filed, but he based this argument on the assumption that the possession of the defendants commenced on April 11, 1923, which is the date of one of the early *dākhilās* filed by them. It seems to be clear, however, that the defendants must have been in possession of the disputed land as under-*rāiyats* with effect from the date of the death of their father on May 2, 1920. There is a clear finding to this effect in the judgment of the learned Munsif, which appears to have been based on the evidence in the case and this finding was not reversed by the learned Subordinate Judge, and, in fact, it appears to have been accepted by him. This being the case, it would appear that the ejectment notice, which was served on the defendants, was served a few months before they had been in possession of the disputed land for a continuous period of 12 years, and, in these circumstances, I think that the defendants could get the benefit of the proviso to s. 48C of the Bengal Tenancy Act, if they were allowed to include the period after the service of the ejectment notice under s. 48C (*d*) of the Act. This being the case, the only point for consideration which arises in connection with this appeal is whether or not any period covered by the notice should be included or excluded from the computation as regards the period of continuous possession.

It seems to be quite clear from the language of s. 48C(*d*) of the Bengal Tenancy Act that, subject to what is stated in the proviso to the section, an under-*rāiyat's* liability to ejectment begins as soon as his tenancy has been terminated by the ejectment notice required by the law, that is, as soon as the notice expires. Having regard, therefore, to what is stated in the proviso to s. 48C, if the under-*rāiyat* claims that he is not liable to ejectment owing to the fact that he has been in continuous possession of the land

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for a period of 12 years, it must be seen whether or not he has held possession of such land continuously for the 12 years immediately preceding the date on which his liability to ejection would arise unless the conditions required by the proviso had been fulfilled. In other words, the date from which his liability or non-liability to ejection must be calculated is the date on which the ejection notice expires.

Neither s. 15 (2) of the Limitation Act nor anything contained in s. 185 of the Bengal Tenancy Act would appear to operate so as to exclude from the benefit of the proviso to s. 48C of the Bengal Tenancy Act any period covered by the ejection notice. These sections would only come into operation in calculating the period of limitation within which a suit to eject an under-*râiyat* should be filed, but it seems to be clear, that if the under-*râiyat's* right as regards non-liability to ejection has already accrued, the landlord's right to institute an ejection suit against him is effectively barred whenever such suit may be instituted.

The learned advocate for the respondents places some reliance upon some observations of Mitter J. in the case of *Jeebankrishna Chakrabarti v. Abdul Kader Chaudhuri* (1), in support of his contention that the right to evict an under-*râiyat* accrues at the time of the service of the ejection notice. In the case above cited there were some differences of opinion between Mitter J. and M. C. Ghose J. with the result that a Letters Patent Appeal was filed and, with regard to the observations made by Mitter J. on the question of the interpretation of cl. (b) of the old s. 49 of the Bengal Tenancy Act, the learned Chief Justice pointed out that the new s. 48C is expressed differently from cl. (b) of the old s. 49. With regard to this point his Lordship stated—

Section 49 did not prescribe that the notice should be a notice for any given period ; as long as it was a notice to quit, and whether it specified any period or not, the landlord would be entitled at the end of the following agricultural

(1) (1933) I. L. R. 60 Cal. 1037, 1039-40.

year to eject the tenant, but, in no circumstances could the tenant be ejected before that time. A complete failure to specify the period within which the under-*rāiyat* was required to quit, did not make the notice bad. . . . It seems to me that the new Act cannot safely be interpreted in the same way.

His Lordship proceeded to point out—

On this point, I desire to say that, when that question comes up for decision, I am not, as at present advised, prepared to say that the reasoning of Mr. Justice Mitter in the present case will conclude the matter.

In my view if it had been the intention of the legislature to provide that an under-*rāiyat*'s liability to ejectment should accrue from the time when the ejectment notice was served on him or that any period between the date of the service of the notice and its expiry should be excluded from the period of 12 years' continuous possession required for the purpose of conferring upon him the right of non-liability to ejectment, this would have been specifically stated in the statute. This has not been done, so I must hold that, in the case out of which this appeal arises, as the defendants had been in continuous possession of their holding for more than 12 years on the date on which the ejectment notice expired, they are protected by proviso (i) (2) to s. 48C of the Bengal Tenancy Act and are not liable to ejectment.

In view of the considerations mentioned above, this appeal must be allowed. The judgment and decree of the lower appellate Court are set aside and those of the Court of first instance are restored, with costs in this Court as well as in the lower appellate Court.

Leave to appeal under s. 15 of the Letters Patent is refused.

*Appeal allowed.*

A.A.

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