APPELLATE CIVIL.

Before Henderson and Biswas JJ.

ALAUDDIN AHMAD CHAUDHURI

v.

TAMIJUDDIN AHMAD.*

1937

May, 5, 6, 10.

Limitation—Special provisions of the Bengal Tenancy Act, when applies—Lease for collection of rents, how to be construed—Bengal Tenancy Act (VIII of 1885), ss. 184, 185 ; Sch. III, Art. 2—Indian Limitation Act (IX of 1908), Sch. I, Arts. 110, 115, 116.

A suit may in terms come under Art. 2 of Sch. III of the Bengal Tenancy Act, but it will be governed by its special limitation only if the suit comes within the purpose and scope of the Act.

Krishna Chandra Bagdi v. *Satish Chandra Banerji* (1) referred to.

The special provisions of limitation in Sch. III of the Bengal Tenancy Act have been left unaffected by the Indian Limitation Act. By virtue of ss. 184 and 185 of the Bengal Tenancy Act and s. 29 of the Indian Limitation Act, if a suit can be brought within the provisions of the Bengal Tenancy Act, the special limitation of Sch. III will apply, and not the provisions of the Indian Limitation Act.

The true test to determine whether a lease for collection of rents does or does not come within the Bengal Tenancy Act is not whether the lands comprised in it are or are not agricultural lands, but whether or not the letting was for agricultural purposes.

The mere fact of the lease being one for collection of rents would not necessarily show that it cannot come within that Act. On the other hand, the mere fact that the land is agricultural or that there are cultivating tenants on it would not make the lease one for an agricultural purpose. To establish an agricultural purpose the terms of the letting will have to be seen. Where the letting is merely for collection of rents and there is no question of the lessee being required or expected to bring any land under cultivation either himself or by members of his family or by servants or labourers or by establishing tenants on the lands, the lease would not come under the Bengal Tenancy Act, even if the lands were agricultural.

Satya Niranjan Chakravarty v. *Sarajubala Debi* (2) relied on.

*Appeal from Appellate Decree, No. 670 of 1935, against the decree of Ramesh Chandra Sen, Third Subordinate Judge of Dacca, dated Dec. 21, 1934, affirming the decree of Manmatha Nath Ghatak, Fourth Munsif of Munshiganj, dated Aug. 30, 1934.

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Burna Moyi Dassee v. *Burma Moyi Chowdhurani* (1); *Basanta Kumar Bose* v. *Khulna Loan Co.* (2); *Wazed Ali Khan Panee* v. *Brojendra Kumar Bandopadhaya* (3); *Promotho Nath Mitter* v. *Kali Prasanna Chowdhry* (4) and *Umrao Bibi* v. *Mahomed Rojabi* (5) distinguished.

It is not correct to say that even if a lease be held not to be for agricultural purposes a suit for rent based thereon may still be governed by the Bengal Tenancy Act for the purposes of limitation, though by virtue of the provisions of s. 117 of the Transfer of Property Act the lease might be subject to the latter Act in respect of matters within Chap. V thereof (so far as its operation was not excluded by anything in s. 2 of that Act).

Rash Behari Lal Munder v. *Tilukdhari Lall* (6) dissented from.

Where a lease is in writing and registered, a suit for rent based thereon will be governed by Art. 116 of the Indian Limitation Act. Where there is no registered lease, Art. 110 and not Art. 115 will apply.

Tricomdas Cooverji Bhoja v. *Gopinath Jiu Thakur* (7) followed.

Quere. Whether Art. 116 of the Indian Limitation Act would apply instead of Art. 2 of Sch. III of the Bengal Tenancy Act to the case of a suit for rent based on a lease coming within the purview of the Bengal Tenancy Act, where the lease is in writing and registered.

Mackenzie v. *Mahomed Ali Khan* (8) doubted.

APPEAL FROM APPELLATE DECREE by the plaintiffs.

The material facts of the case and arguments in the appeal appear sufficiently from the judgment.

Naresh Chandra Sen Gupta and *Hamid-Ul Huq* for the appellants.

Jyotish Chandra Guha for the respondents.

Cur adv. vult.

BISWAS J. The suit out of which this appeal arises has been dismissed by both the Courts below as barred by limitation under Art. 2 of Sch. III of the Bengal Tenancy Act. The plaintiffs have appealed to this Court, and contend that the suit is governed by Art. 116 of the Indian Limitation Act. In one case the limitation would be three years, and in the other six.

(1) (1895) I.L.R. 23 Cal. 191.
(2) (1914) 19 C.W.N. 1001.
(3) (1932) 36 C.W.N. 833.
(4) (1901) I. L. R. 28 Cal. 744.
(5) (1899) I.L.R. 27 Cal. 205.
(6) (1915) 20 C.W.N. 485.
(7) (1916) I. L. R. 44 Cal. 759; L.R. 44 I. A. 65.
(8) (1891) I.L.R. 19 Cal. 1.

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The suit is one for recovery of rent, based on a registered *ijârâ* lease for five years from *Baisákh* 1332, to *Chaitra*, 1336 B.S., reserving a yearly rental of Rs. 300 payable in four equal quarterly instalments, the last instalment being payable on the 5th *Chaitra*. The claim relates to three years, from 1334 to 1336 B. S., *i. e.*, up to April 13, 1930, and as the suit was filed on February 5, 1934, it would obviously be out of time, if Sch. III of the Bengal Tenancy Act be held to apply.

At one stage the plaintiffs' argument was that the instrument by which the *ijârâ* was created was a contract of service, and not a lease, and that the payment stipulated therein was wages for service rendered, and not rent. This argument was overruled by the learned Subordinate Judge in the lower appellate Court, and was not further pressed before us. It may be taken, therefore, for present purposes, that the suit is one for recovery of an arrear of rent, and it may be further assumed, as in fact was not disputed, that the parties stood in the relation of landlord and tenant. This being so, the question is, whether it would be governed by Sch. III of the Bengal Tenancy Act.

In terms the suit may be said to come under Art. 2 of this Schedule. But as was observed by Jenkins C. J. in *Krishna Chandra Bagdi* v. *Satish Chandra Banerji* (1), in connection with Art. 3, in determining what Art. 2 means, we must not leave out of sight the purpose and scope of the Act. The special limitation under this Act will, therefore, apply only if the suit is one coming within the purview of the Act.

It is necessary first to point out that the special provisions of limitation in Sch. III have been left unaffected by the Indian Limitation Act. Section 184 of the Bengal Tenancy Act provides that the suits, appeals and applications specified in Sch. III thereof

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shall be instituted and made within the time prescribed in that schedule for them, respectively; and every such suit or appeal instituted and application made after the period of limitation so provided shall be dismissed, although limitation has not been pleaded. Section 185 which occurs in the same chapter (Chap. XIV) then enacts that ss. 6, 7, 8 and 9 and sub-s. (*2*) of s. 29 of the Indian Limitation Act, 1908, shall not, and subject to the provisions of this chapter, the remaining provisions of that Act, shall apply to all suits, appeals and applications specified in Sch. III. The effect of these provisions is that where a case falls within the terms of Sch. III, the special limitation provided therein will apply, otherwise the case will be governed by the Indian Limitation Act. The terms of s. 29 (*2*) of the Indian Limitation Act may also be referred to in this connection. It provides that :—

"Where any special or local law prescribes for any suit, appeal or "application a period of limitation different from the period prescribed "therefor by the first schedule" of the Indian Limitation Act, "the provis- "ions of s. 3 shall apply, as if such period were prescribed therefor in that "schedule, and for the purpose of determining any period of limitation pre- "scribed for any suit, appeal or application by any special or local law—

"(*a*) the provisions contained in s. 4, ss. 9 to 18 and s. 22 shall apply "only in so far as, and to the extent to which, they are not expressly "excluded by such special or local law ; and

"(*b*) *the remaining provisions of this Act shall not apply.*"

It is clear, therefore, that s. 29 of the Indian Limitation Act expressly saves the provisions of any special or local law regarding limitation. There can be no doubt that the Bengal Tenancy Act is a special law within the meaning of the said section, and if a suit can, therefore, be brought within the provisions of this Act, the special limitation of Sch. III will apply, and not the Provisions of the Indian Limitation Act.

The real question, then, which arises for consideration in this case is whether or not the suit is one

under the Bengal Tenancy Act. It is necessary for this purpose to examine the nature of the tenancy. The lease creating the tenancy is Ex. 1 in the case, and purports to be for the collection of rents from the tenants on the lands, which the lessee is to retain in consideration of his paying to the lessors the stipulated sum of Rs. 300 per year inclusive of Road and Public Works Cesses, within the specified *kists*, with interest at the rate of 2 per cent. per mensem in case of default of any *kist*. The lessee further undertakes to pay any additional rates or taxes that may be imposed by Government during the period of the lease. The lessee is empowered to bring suits for the realization of rents from the tenants of the lands as also suits for *khâs* possession in his own name as *ijârâdâr* at his own cost. It is in this connection that cl. 8 of the lease provides that the lessee will be entitled to execute decrees for rent against tenants by sale of their moveables or of their *jote-satwa*. The reference to *jote-satwa* is obviously to agricultural holdings, but this must be read along with the recitals in other parts of the lease, to see what kinds of land are comprised in the lease. The preamble shows that the *ijârâ* was in respect of two different items of property, appertaining to two different *touzis* of the Dacca Collectorate and recorded under two different *khatiyân* numbers in the settlement proceedings. One is described as recorded in *khatiyân* No. 1165 of *mouzâ* No. 88, *kismat char* Keoar *dâyemi bandobasti mehâl* appertaining to *Parganâ Char* Khodedadpur of *touzi* No. 10182. The other is described as recorded in *khatiyân* No. 606 of *mouzâ* No. 80 Deobhog and being Katakhali Teker-hat generally known as Munshir-Hât. Clause 1 of the lease specifies the nature of the properties from which the lessee is authorised to collect rents, and in this connection uses the words *jami jamâ hak hakuk* along with other words which are apposite only to collections from a *hât* or market for the sale of commodities. Reading the document as a whole, it appears, therefore, that the lands comprised in the *ijârâ* were

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partly agricultural and partly non-agricultural, the agricultural lands being within *kismat char* Keoar of *khatiyân* No. 1165, the lands in the other *mouzâ* under *khatiyân* No. 606 being non-agricultural. That this is so is borne out by the evidence of the defendant himself, who stated in cross-examination that there was no cultivating land in Munshir-Hât. So far as to the nature of the lands comprised in the lease. So far as the purpose of the lease is concerned, it follows that, purporting as it does to be one for collection of rents from tenants, the lease can be regarded as agricultural, if at all, only as regards the agricultural lands, and not as regards the lands in Munshir-Hât which were used as and for a market.

The point to consider is as to whether in these circumstances the lease may be said to come within the Bengal Tenancy Act. It may be conceded that the mere fact of the lease being one for collection of rents would not necessarily show that it cannot come within that Act. For it will be observed that by s. 5 of the Act, a tenure-holder within the meaning of the Act is defined to include a person who acquires only a right to hold land for the purpose of collecting rents. It was, however, held by Banerjee J. in *Umrao Bibi* v. *Mahomed Rojabi* (1) that in order that a person may be a tenure-holder within the meaning of the Bengal Tenancy Act, it must be proved that the land was let out as a holding for agricultural (or horticultural) purposes. As was pointed out by the learned Judge, this is indeed made sufficiently clear by the provisions of s. 7 of the Act among others.

In my opinion the true test to determine whether a lease for collection of rents does or does not come within the Bengal Tenancy Act is *not* whether the lands comprised in it are or are not agricultural lands, *but whether or not the letting was for agricultural purposes.* Where the lands are not agricultural, there can obviously be no question of the lease being for an agricultural purpose, but where the

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lands comprised in a lease are agricultural, all that can be said is that a presumption may arise that the purpose is also agricultural, but this will not necessarily be so. To establish an agricultural purpose, apart from the agricultural character of the lands, the terms of the letting will have to be seen. Where, as here, the letting is merely for collection of rents, and there is no question of the lessee being required or expected to bring any land under cultivation either himself or by members of his family or by servants or labourers, or by establishing tenants on the lands, the mere fact that the land is agricultural or that there are cultivating tenants on it would not make the lease one for an agricultural purpose.

This view is, in my opinion, fortified by the decision of the Judicial Committee, approving and affirming the judgment of this Court in *Satya Niranjan Chakravarty* v. *Sarajubala Debi* (1). It was held in this case that the lease in question there was not a lease for agricultural purpose, and, therefore, not excepted from the operation of the Transfer of Property Act by s. 117 of that Act. Their Lordships said :—

> This was the creation of a tenancy for the purpose of realisation of rent *from cultivating tenants*, and therefore the provisions of the Transfer of Property Act apply to it.

This is clear authority to show that even though there are cultivating tenants on the lands, this will not necessarily make the lease a lease for an agricultural purpose: in other words, it is not the nature of the land but the purpose of the letting which will determine the character of the tenancy and determine whether the Transfer of Property Act or the Bengal Tenancy Act will apply.

In the present case, as already stated, the lands are only partly agricultural. The exact proportion of agricultural to non-agricultural lands is not clear: there is, however, evidence that the non-agricultural

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portion comprised in the *hât* was let in *ijârâ* for a subsequent period of four years at an annual rental of Rs. 160, while the total annual rent reserved by the *ijârâ* lease in suit, for the entire lands of the tenancy, was Rs. 300. This shows that the non-agricultural lands formed no inconsiderable part of the tenancy, and this would certainly weaken the presumption of the lease being one for an agricultural purpose.

Much reliance was placed on behalf of the respondent on the case of *Rash Behari Lal Munder* v. *Tiluckdhari Lall* (1), which was a decision of Fletcher and Richardson JJ. It was argued on the authority of this case that even if the lease be held not to be for agricultural purposes, the suit would still be governed by the Bengal Tenancy Act for the purposes of limitation, though, by virtue of the provisions of s. 117 of the Transfer of Property Act, the lease might be subject to this latter Act in respect of matters within Chap. V thereof (so far as its operation was not excluded by anything in s. 2 of that Act).

Now, in support of their view, the learned Judges in that case relied on the analogy of a *patni* lease, and referred to the decision in *Burna Moyi Dassee* v. *Burma Moyi Chowdhurani* (2), as showing that a suit for rent on a *patni* lease is governed by Art. 2 of Sch. III of the Bengal Tenancy Act. That undoubtedly was the decision in this case, but it will be seen that this was more or less taken for granted by the learned Judges. The *patni* had been previously brought to sale under the provisions of Regulation VIII of 1819, but as the sum realised by the sale was not sufficient to satisfy the claim, a suit was afterwards instituted to recover the balance of the *patni* rent. The question which arose was stated to be whether the period of limitation ran continuously from the last day of the Bengali year in which the arrear fell due or whether the time during which the proceedings before

(1) (1915) 20 C.W.N. 485. (2) (1895) I.L.R. 23 Cal. 191.

the Collector under the *Patni* Regulation were pending could be deducted. In holding that no deduction could be claimed, their Lordships stated that the case was governed by the provisions of the Bengal Tenancy Act, s. 184 and Art. 2 (*b*) of Sch. III to that Act, and dismissed the suit accordingly as barred by limitation. No reason was given as to why the special limitation under the Bengal Tenancy Act would apply,—whether because the *patni* lease was a lease for an agricultural purpose, or merely because the lands comprised in the *patni* were agricultural. The point was neither raised nor considered: it was in fact assumed that Sch. III of that Act would apply, and the only question as already stated was whether the plaintiff was entitled to deduction of a certain period.

There have been other decisions since in which it has been held that suits for recovery of *patni* rent come within the Bengal Tenancy Act and are governed by Sch. III thereof: see, for instance, *Basanta Kumar Bose* v. *Khulna Loan Co.* (1) and *Wazed Ali Khan Panee* v. *Brojendra Kumar Bandopadhaya* (2), but these cases, again, hardly throw any light on the point in controversy, as none of them deal with the question as to what determines the applicability of the Bengal Tenancy Act to *patni* leases or to suits for *patni* rent. In the first of these cases, an objection was raised for the first time in Second Appeal that the *patni* in suit was not subject to the operation of the Bengal Tenancy Act on the ground that there was no evidence to show that the *patni* had been granted for realization of rents from agricultural tenants, and the objection was sought to be rested on the authority of *Promotho Nath Mitter* v. *Kali Prasanna Chowdhry* (3) and *Umrao Bibi* v. *Mahomed Rojabi*, *supra*, but it was ruled that the point could not be raised at that stage, as it involved the determination of a question of fact and the case was decided on the assumption on which it had proceeded in the

(1) (1914) 19 C. W. N. 1001. (2) (1932) 36 C.W.N. 833.
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Courts below that is was governed by the provisions of the Bengal Tenancy Act. In the other case *Wazed Ali Khan Panee* v. *Brojendra Kumar Bandopadhaya*, *supra*, the proposition was merely accepted as settled on the authority of earlier decisions.

In my opinion, neither the decision in *Burna Moyi's* case, *supra*, which was relied on by Fletcher and Richardson JJ., nor any of the other cases which have held that the provisions of Sch. III of the Bengal Tenancy Act apply to suits for recovery of *patni* rent, supports the conclusion which is sought to be drawn in *Rash Behari Lal Munder* v. *Tiluckdhari Lall*, *supra*, that these provisions will apply in the case of a lease for collection of rents, where it is merely shown that the lease relates to agricultural lands or that the rents are to be collected from agricultural tenants, and not that the purpose of the lease is agricultural. In point of fact, it will be seen that the lease in *Rash Behary Lal Munder's* case, *supra*, was held to be one for an agricultural purpose, and in that view the observations in that case on which the respondent relies in the present appeal were mere *obiter dicta*.

The better view, accordingly, as I have indicated above, is to hold that the Bengal Tenancy Act applies only to a lease for an agricultural purpose, and not to a lease which is a lease of agricultural lands, but not for an agricultural purpose. This will avoid the necessity of holding that a lease not being for an agricultural purposes will be subject to the provisions of Chap. V of the Transfer of Property Act for certain purposes, but that, for the purposes of limitation, it will be governed by the provisions of the Bengal Tenancy Act. Neither authority nor principle requires the acceptance of such an anomalous position, and if and in so far as the decision in *Rash Behari Lal Munder* v. *Tiluckdhari Lall*, *supra*, involves or lends support to such view, I respectfully differ.

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In any case, that decision can be of no assistance to the respondent in the present appeal, for here admittedly nearly half the lands comprised in the lease are non-agricultural.

The conclusion, therefore, I come to is that the lease in this case is not subject to the operation of the Bengal Tenancy Act, and the special rule of limitation prescribed by that Act will accordingly not apply. The lease being in writing and registered, the limitation applicable will be that under Art. 116 of the Indian Limitation Act: *Tricomdas Cooverji Bhoja* v. *Gopinath Jiu Thakur* (1), where it was held that a suit for rent on a registered lease is a suit "for "compensation for breach of a contract in writing "registered" within the meaning of Art. 116.

Referring to this decision of the Privy Council, it may be pointed out that Art. 110 of the Indian Limitation Act specifically provides for suits "for "arrears of rent," and it is held that where there is no registered lease, this Article will apply, and not Art. 115, which speaks of suits "for compensation for "the breach of any contract, express or implied, not "in writing registered and not herein specially pro-"vided for." Where, however, there is a lease in writing and registered, their Lordships hold that Art. 116 will apply and not Art. 110, notwithstanding the fact that Art. 116 uses exactly the same terms, "compensation for the "breach of a contract," as in Art. 115. This is because of the omission in Art. 116 of the words which occur in Art. 115, "and not herein specially "provided for." In other words, the effect of this decision is that Art. 110 will affect Art. 115 but not Art. 116: in other words, Art. 115 will apply where there is no special provision (such as Art. 110), but Art. 116 will apply, whether there is special provision or not. Their Lordships came to this decision mainly because of a long and uniform course of judicial interpretation of the corresponding Articles in the previous Limitation Acts. The position,

(1) (1916) I. L. R. 44 Cal. 759; L. R. 44 I. A. 65.

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therefore, is that where there is a lease in writing and registered, a suit for rent based on such a lease will be governed by Art. 116, and not by any special provision that may exist in terms for suits for arrears of rent; but that, where there is no registered lease, the suit will be treated as a suit for rent coming within the special provision, and not under Art. 115.

Applying the line of reasoning accepted by the Judicial Committee in the interpretation of the relevant articles, it may be well doubted why, if Art. 110 does not affect Art. 116 of the Indian Limitation Act, Art. 116 will be at all affected by the special provision of Art. 2 of Sch. III of the Bengal Tenancy Act. By virtue of ss. 184 and 185 of the Bengal Tenancy Act, Art. 2 of Sch. III of this Act may be said to take the place of Art. 110 of the Indian Limitation Act and Art. 116 of the Indian Limitation Act may be deemed to be incorporated in the Bengal Tenancy Act. If Art. 110 is then superseded by Art. 116 of the Indian Limitation Act, there seems to be no valid reason why Art. 116 should not similarly supersede Art. 2 of Sch. III of the Bengal Tenancy Act. It should follow, therefore, that even where a lease is a lease admittedly coming within the purview of the Bengal Tenancy Act, if the lease is in writing and registered, the limitation applicable to a suit for rent on the basis of such lease will be that under Art. 116 of the Indian Limitation Act, and not Art. 2 of Sch. III of the Bengal Tenancy Act. This would no doubt be contrary to the decision of the Full Bench of this Court in *Mackenzie* v. *Mahomed Ali Khan* (1), which held that suits for rent, founded on registered contracts in respect of lands subject to the provisions of the Bengal Tenancy Act, are governed by the limitation provided in that Act. It is, in my opinion, a point for consideration how far the Full Bench case can be reconciled with the decision of the Privy Council. As, however, the learned advocate for the appellant in this case did not raise the point, and as it is possible to rest the

(1) (1891) I. L. R. 19 Cal. 1.

decision of the appeal on the other and surer ground that the lease does not come under the Bengal Tenancy Act at all, it is not necessary to consider the matter further or express any final opinion on it.

The result is that the judgment and decree of the learned Subordinate Judge must be, and are, hereby set aside, and the suit remanded to the Court of first instance to be tried on the merits. Costs of all Courts including the costs of this hearing will abide the result.

HENDERSON J. I agree. I only desire to say a few words with regard to the contention made on behalf of the respondents that, even though this lease is governed by the Transfer of Property Act, the special limitation provided by the Bengal Tenancy Act will still apply. In my opinion, the special law of limitation only applies to tenancies governed by the Act itself. The contention made on behalf of the respondent derives some support, not from the decision itself, but from certain observations made by Mr. Justice Richardson in the case of *Rash Behari Lal Munder* v. *Tiluckdhari Lall* (1). If that learned Judge intended to lay down that, although the tenancy with which he was dealing was governed by the Transfer of Property Act, the special law of limitation still applies, I must respectfully express my dissent from such a conclusion. There is no authority for such a proposition in the case of *Burna Moyi Dassee* v. *Burma Moyi Chowdhurani* (2), on which the learned Judge appears to rely. In that case it was apparently not disputed that the tenancy was governed by the Bengal Tenancy Act. The only point of controversy between the parties was the exact time when the limitation began to run. As at present advised, I do not wish to express any opinion on the question whether the decision of the Full Bench of this Court to which my learned brother has referred requires reconsideration.

Appeal allowed; case remanded.

A.C.R.C.

(1) (1915) 20 C. W. N. 485. (2) (1895) I. L. R. 23 Cal. 191.