APPELLATE CIVIL.

Before Edgley J.

KANTI CHANDRA GHOSHAL

v.

SUCHITRA SUNDARI DASI.*

1939

May 1, 2.

Landlord and Tenant—*Rent—Reduction of rent—Village*-chaukidâri *Act (Ben. VI of 1870), s. 55.*

The plaintiff purchased two holdings in a sale under s. 55 of the Village-*chaukidâri* Act on November 10, 1934 (Kârtik 24, 1341 B. S.). The sale certificate, however, stated that the purchase was to take effect from Baisâkh 16, 1341 B. S., which was the date upon which the requisition for sale was sent to the Collector by the collecting member of the *panchâyet*.

Held that the plaintiff is entitled to recover rent only for two *kists* of the year 1341 B. S.

Where the tenant claims a reduction of the rate of rent, the onus is on him to show that there has been a permanent relinquishment by the landlord of the right to receive the higher rate of rent.

Radha Raman Chowdhuri v. *Bhabani Prosad Bhowmik* (1) and *Lakshmi Charan Majumdar* v. *Nabadwip Chandra Pandit* (2) followed.

APPEAL FROM APPELLATE DECREE preferred by the plaintiff.

The plaintiff purchased two separate holdings under *chaukidâri-châkrân* in Agrahâyan, 1341 B.S., in a sale under form D.

These two appeals arose out of two suits for rent. The defendants questioned the title of the plaintiff and further resisted the suit on the ground that no notice of the purchase by the plaintiff had been served on them. They also claimed a reduction of rent. The Munsif held in favour of the plaintiff on all points and decreed the suits. On appeal the District

*Appeals from Appellate Decrees, Nos. 676 and 677 of 1937, against the decrees of B. K. Guha, District Judge of Birbhum, dated Nov. 30, 1936, modifying the decrees of Satyendra Nath Palit, Munsif, First Court, Rampurhat, dated Feb. 24, 1936.

(1) (1901) 12 C. L. J. 439. (2) (1928) I. L. R. 56 Cal. 201.

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Judge modified the decree by allowing a reduced rate of rent and disallowing rent for the *kists* prior to the completion of the sale.

From this judgment the plaintiff appealed.

Arguments advanced in this case are fully dealt with in the judgment.

Biman Chandra Bose for the appellant.

Gopendra Nath Das and *Kshetra Mohan Chatterjee* for the respondents.

EDGLEY J. In the suits out of which these appeals arise the plaintiff sought to recover arrears of rent in respect of two separate holdings which he had purchased under s. 55 of the Village-*chaukidâri* Act (Ben. VI of 1870).

Various pleas were urged on behalf of the defendants, but the only points raised by the defence with which we are concerned in these appeals are: (1) whether or not the plaintiff is entitled to recover the whole of the rent for 1341 B.S. or only for two *kists* for that year and (2) whether the defendants are entitled to a reduction of rent.

With regard to the first of these points it appears that the first Court allowed the plaintiff to recover rent for the whole of 1341 as claimed in the plaint. The lower appellate Court held, however, that, as the sale took place on November 10, 1934, that is in Kârtik, 1341, the plaintiff was only entitled to recover rent for two *kists* of that year. In support of his case with reference to this point the plaintiff relies upon the terms of the sale-certificate granted to him which states that his purchase took effect from Baisâkh 16, 1341 B.S. It is, however, contended on behalf of the defendants that, having regard to the clear provisions of the law, the date mentioned in the sale-certificate must be a clear error, as the sale could not have taken effect until after the last day for payment of the assessment, which, according to the defendants, must be taken to have been the date

mentioned for payment in the notice issued by the Collector under s. 55 of the Village-*chaukidâri* Act.

Under s. 52 of Bengal Act VI of 1870 it is provided that the assessment shall be a permanent yearly charge on the land and shall be payable to the collecting member of the *panchâyet* yearly in advance on the first day of the year current in the village by the person for the time being entitled to recover the rents of such land from the occupier thereof. Section 54 provides that, when the assessment shall be in arrear for the space of fifteen days after it shall have become payable, the collecting member of the *panchâyet* shall forward to the Collector of the district, in which the land so assessed is situate, notice of the amount of such arrear and the name of the person liable to pay such assessment in the form in Schedule (D) annexed to the Act. From these sections it would appear that the *chaukidâri* assessment becomes an arrear corresponding to an "arrear" under s. 2 of the Revenue-sale Law if it is not paid on the 1st of Baisâkh in each year. A period of grace of fifteen days is allowed by s. 54 of the Act and, if the requisite payment is not made within the period of grace, the Collector may be asked to sell the land under s. 55 of the Act. This section provides for the issue of a notification for sale under s. 6 of Act XI of 1859 and then goes on to say that, unless the arrears be paid within the time mentioned in such notification, the Collector shall sell such land according to the provisions of the Revenue-sale Law. It is, therefore, necessary in the notification for the Collector to mention a date within which the arrears should be paid. In this connection, the last portion of s. 55 of the Act is important which provides that—

> All provisions of the law for the time being in force with respect to the sale of such estates shall apply to the sale of such land, and every such sale shall have such and the same force and effect as if the same were a sale of an estate for arrears of its own revenue.

Having regard, therefore, to the provisions of this section, read in the light of the corresponding

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provisions of the Revenue-sale Law it would appear that the date to be mentioned by the Collector in the sale notification, which he is bound to publish under s. 55, must be taken to correspond to the latest day of payment to which reference is made in s. 3 of Act XI of 1859. Section 28 of the latter Act provides that—

> Immediately upon a sale becoming final and conclusive the Collector or other officer shall give to the purchaser a certificate of title in the form prescribed in Sch. A annexed to this Act.

It is clear from the form contained in Sch. A that the date with effect from which the purchase takes effect must be the day after that fixed for the last day of payment, which would appear to be the date to which reference is made in s. 3 of the Revenue-sale Law. It follows, therefore, that, as the general provisions of the Revenue-sale Law must apply to sales held under Bengal Act VI of 1870, the date mentioned in the plaintiff's sale-certificate should have been the date after the date fixed by the Collector under s. 55 for the payment of the arrears. It stands to reason that this date could not possibly have been the 16th of Baisâkh which was the date upon which the requisition for sale was sent to the Collector by the Collecting member of the *panchâyet* under s. 54 of the Village-*chaukidâri* Act. Clearly, the date in question must have been considerably later than the 16th of Baisâkh. The onus lay upon the plaintiff to show what this date was and, as he has not discharged this onus, I think that the lower appellate Court was justified in holding that the title of the plaintiff accrued only from November 11, 1934, namely, the date upon which the sale was held. In this view of the case, it is clear that the plaintiff would only be entitled to recover two *kists* for the year 1341. As regards the other two *kists*, the defaulting landlord would be entitled to recover the arrears of rent due to him in view of the provisions of s. 55 of the Bengal Land-revenue Sales Act which provides that—

> Arrears of rent which on the latest day of payment may be due to the defaulter from his under-tenants or *râiyats* shall, in the event of a sale, be

recoverable by him after the said latest day, by any process except distraint which might have been used by him for that purpose on or before the said latest day.

It is urged on behalf of the appellant that considerable hardship will result to him by the decision of the lower appellate Court. I am, however, not prepared to accept this argument. As regards the year 1341, it is clear that the plaintiff has no liability at all in respect of the payment of the *chaukidâri* assessment as this liability has been met out of the sale proceeds under s. 56 of the Act and his liability as regards the assessment can only be held to have accrued on Baisâkh 1, 1342. In my opinion, the decision of the lower appellate Court on this point is correct.

As regards the second point it has been held by the lower appellate Court that the rent payable by the defendants had been reduced. The record-of-rights shows the rent payable in respect of these holdings at the rate claimed by the plaintiff. This being the case, the onus would, in my opinion, lie very heavily upon the defendants to show that they were liable to pay rent at a reduced rate. All that they have done for the purpose of discharging this onus is to examine a person named Golam Nabi who claims to have been a *gomastâ* of the managing landlords. His evidence, however, is merely to the effect that he was authorised by two of these landlords to collect rent at a reduced rate. He states that the landlords who had given him this authority were managing the estate on behalf of the other landlords, but there is no indication in his evidence to the effect that the other landlords had given the two managing landlords authority to reduce the rate of rent payable by the tenants, nor does this witness state expressly that the reduction was of a permanent nature. In this connection it was pointed out by Gupta J. in the case of *Radha Raman Chowdhuri* v. *Bhabani Prosad Bhowmik* (1) that—

> Mere acceptance of a reduced rent, though it may amount to a full acquittance of rent for the particular year or years for which the rent was paid,

(1) (1901) 12 C. L. J. 439, 441.

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cannot operate as a binding contract between the parties without proof of the agreement which formed the basis of the reduction granted.

Similarly, in the case of *Lakshmi Charan Majumdar* v. *Nabadwip Chandra Pandit* (1), Mitter J. observed :—

It lay on the defendant to establish that there has been a permanent relinquishment of the right by the plaintiff to receive the higher rent. The fact of the non-realisation of rent for a large number of years may be consistent with a temporary abatement although the temporary abatement might extend over a large number of years.

Having regard to the principles laid down in the two cases cited above, I do not think it can be said in this case that the defendants have succeeded in discharging the onus which clearly lay upon them to establish the permanent character of the reduction which they sought to prove. With regard to this point, therefore, I am of opinion that the decision of the lower appellate Court is erroneous.

The result, therefore, is that the appellant's suits will be decreed at the full rate of rent, cess and damages claimed by him in respect of the last two *kists* of 1341 B.S. The decrees of the lower appellate Court must be modified accordingly.

I make no order with regard to the costs of these appeals.

Appeals allowed in part.

S. M.

(1) (1928) I. L. R. 56 Cal. 201, 207.