APPELLATE CIVIL.

1939

Dec. 15.

Before Edgley J.

ALI AHAMMAD

v.

ABDUL GANI MIYA.*

Ejectment—*Under*-râiyat—*Protection from ejectment*—*Bengal Tenancy Act (VIII of 1885), s. 48C*, cl. (c), *prov.* (i)(2).

By virtue of cl. (*i*)(2) of the proviso to s. 48C of the Bengal Tenancy Act, 1885, an under-*râiyat* is protected from eviction from the land held by him, if he has been in possession of such land, as an under-*râiyat*, for a continuous period of twelve years or more.

The defendant had been in possession of a certain land as an under-*râiyat* from the year 1329 B.S., till the end of Poush, 1338 B.S., then had a *bargâ* lease in respect of the same land as from the beginning of Mâgh, 1338 B.S., till the end of Poush, 1339 B.S., and again had been in possession as an under-*râiyat* under a written lease from the beginning of Mâgh, 1339 B.S., till the end of Poush, 1342 B.S. In a suit by the *râiyat* for ejectment of the defendant under s. 48C of the Bengal Tenancy Act, 1885, on the ground that the period of the under-*râiyati* lease in writing in favour of the defendant had expired at the end of Poush, 1342 B.S., the defendant contended that he had been in possession of the land continuously for a period of more than twelve years since the year 1329 B.S., and as such he was protected by cl. (*i*)(2) of the proviso to s. 48C of the Act.

Held that cl. (*i*)(2) of the proviso to s. 48C of the Act did not protect the defendant, inasmuch as during the period 1329 B.S. to 1342 B.S. the defendant was in possession of the land, he was not all the while an under-*râiyat* but a *bargâdâr* during the period Mâgh, 1338 B.S. to Poush, 1339 B.S.

Biswambar Chakravarty v. *Kalidas Dhupi* (1) dissented from.

APPEAL FROM APPELLATE DECREE preferred by the defendant No. 1.

The facts material for this report and the arguments in the appeal appear sufficienty from the judgment.

Abinash Chandra Ghose and *Amarendra Nath Roy Chowdhury* for the appellant.

*Appeal from Appellate Decree, No. 63 of 1938, against the decree of S. S. R. Hattiangadi, District Judge of Tipperah, dated July 19, 1937, reversing the decree of S. M. Banerjee, Second Munsif of Chandpur, dated Feb. 27, 1937.

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Nagendra Chandra Chaudhury for the respondents.

EDGLEY J. In the suit, out of which this appeal arises, the plaintiffs sued the defendants for ejectment from the land in suit on the ground that the defendants were under-*râiyats* and, on the expiry of their tenancy, they were liable to ejectment under the provisions of s. 48C (*c*) of the Bengal Tenancy Act.

The case for the defendants was to the effect that they were protected from eviction under the proviso to s. 48C of the Bengal Tenancy Act.

The first Court decided that the defendants were entitled to protection and the plaintiffs' prayer for *khâs* possession was, therefore, rejected, and their suit was dismissed. The plaintiffs then appealed, and the lower appellate Court held that the defendants had not been in continuous possession of their holding for a period of twelve years and, in these circumstances, the plaintiffs were entitled to eject them. Defendant No. 1, Ali Ahammad, has now appealed to this Court.

The first point urged in favour of the appellant is that the lower appellate Court has placed a wrong interpretation on cl. (2) of the first prov. to s. 48C of the Bengal Tenancy Act. This proviso is to the effect that an under-*râiyat* shall not be liable to ejectment on the ground that the term of his lease has expired if he has been in possession of his land for a continuous period of twelve years.

The findings of the Courts below are to the effect that the appellant was in possession of the holding, from which the plaintiffs seek to evict him, as an under-*râiyat* from the year 1329 B.S. until the end of Poush, 1338 B.S., when the second under-*râiyati* lease, which had been granted to him on Mâgh 7, 1333 B.S., expired. Thereafter, it appears that the plaintiffs took the demised land into their *khâs* possession and granted to the appellant, Ali

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Ahammad, and his brother, a *bargâ* lease in respect thereof, as from Mâgh 1338 B.S. to Poush 1339 B.S. Again, on the expiry of the *bargâ* lease, the plaintiffs granted Ali Ahammad another under-*râiyati* lease with effect from 1339 B.S. to Poush 1342 B.S., and it was when this last lease expired that the plaintiffs instituted the suit for ejectment of the defendants, out of which this appeal arises.

It is argued on behalf of the appellant that he must be regarded as being protected under the proviso (*i*) (2) to s. 48C of the Bengal Tenancy Act, because, from the facts found by the Courts below, it would appear that he must have been in possession of the land which is the subject-matter of the suit, at any rate, with effect from the year 1329 B.S. In support of this contention reliance is placed upon a decision of this Court in the case of *Biswambar Chakravarty* v. *Kalidas Dhupi* (1) in which the argument was advanced that, in order to bring this clause into operation, the under-*râiyat* must have been in possession as an under-*râiyat* for more than twelve years. This argument was rejected by Jack J. on the ground that the section did not bear the suggested interpretation. I am, however, not in agreement with the views adopted by the learned Judge in the above cited decision. In my view, the language of prov. (*i*) (2) of s. 48C of the Bengal Tenancy Act clearly implies that, if an under-*râiyat* claims protection from eviction under this proviso, he must show that he has been in continuous possession of the demised land as an under-*râiyat* for a period of twelve years or more. The section definitely states that the under-*râiyat* is protected if he "has been in possession of *his* land for a continuous period of twelve years." As long as a person is an under-*râiyat*, he must of course be regarded as a tenant in view of the provisions of s. 4(*3*) of the Bengal Tenancy Act, and as a tenant he has numerous statutory rights which have been conferred upon him

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by the provisions of the Bengal Tenancy Act. It is probably on this account that the land held by an under-*râiyat* has been described as *his* land in the proviso which we are now discussing. It is, however, clear from the proviso to s. 3(*17*) of the Bengal Tenancy Act that a *bargâdâr* is not regarded by the legislature as a person who cultivates his own land. On the other hand, it is expressly stated in this proviso "that a person who, under the system generally known as '*âdhi*', '*bargâ*', or '*bhâg*', cultivates the land of another person" is not a tenant, except in certain circumstances which do not exist in the present case. It follows, therefore, that the continuous possession to which reference is made in proviso (*i*) (2) to s. 48C of the Bengal Tenancy Act must be continuous possession by a person who, by reason of his status as an under-*râiyat* is entitled to say that the land is his. Obviously, no such claim could be made by a person in the position of the appellant in this case who, for a year before the lease, *viz.*, exhibit 3C which expired in 1343, held the demised land as a *bargâdâr*. I have carefully examined the terms of the *bargâ* lease, exhibit 3 (b), and, in my view, there can be no doubt from the document that the intention of the parties to that lease was that Ali Ahammad and his brother should hold the demised land as the servants of the lessors and that, during the period of the lease, they should have no status as tenants. In other words, while the *bargâ* lease was in operation, the demised land was in the possession of the plaintiffs and not in that of the defendants. I am, therefore, clearly of opinion that the defendants were not protected under the proviso (*i*) (2) to s. 48C of the Bengal Tenancy Act.

With regard to proviso (*ii*) to s. 48C of the Act, however, the appellant is in a stronger position, as it is provided therein that in the case of under-*râiyats* other than those described in proviso (*i*), they shall not be liable to ejectment on the grounds specified in clauses (*c*) and (*d*) of the section "unless "the landlord has satisfied the Court that he requires

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"the land for his homestead or for culti- "vation by himself or by members of his family "or by hired servants or with the aid of "partners." It is clear, therefore, that before under-*râiyats* in the position of the defendants in the suit, out of which this appeal arises, can be ejected, the Court must come to a clear finding on the point whether or not the landlord requires the land for the purposes mentioned in the second proviso. This question has not been considered by either of the Courts below, and it is, therefore, necessary that the case should be remanded to the lower appellate Court for a decision on this point.

The judgment and decree of the lower appellate Court are, therefore, set aside and the case is remanded to that Court for further consideration in the light of the above observations.

Costs will abide the final result.

The parties will be at liberty to adduce such further evidence on the abovementioned point as they may consider necessary.

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

Appeal remanded.

P. K. D.