APPELLATE CIVIL.

Before Mr. Justice Parker and Mr. Justice Shephard.

SUBBA AND ANOTHER (DEFENDANTS NOS. 1 AND 5), APPELLANTS,

v.

NAGAPPA (PLAINTIFF), RESPONDENT.*

1888. Nov. 13. 1889. March 4.

Landlord and tenant—Ejectment—Permanent tenancy pleaded—Notice to quit.

Suit to eject defendants from certain land held by them from the plaintiff under a *chalgeni* (yearly) demise of 1869. The defendants pleaded that they were *kattugudi* (permanent) tenants of the land in question; they had set up their title as *kattugudi* tenants previous to the *chalgeni* demise, but it did not appear that they had re-asserted it up to date of suit:

Held, that the issue whether the plaintiff had given a notice to quit, reasonable and in accordance with local usage, should be tried.

Baba v. *Vishvanath Joshi* (I.L.R., 8 Bom., 228) considered.

SECOND APPEAL against the decree of J. W. Best, District Judge of South Canara, in appeal suit No. 312 of 1885, modifying the decree of J. Lobo, District Munsif of Puttur, in original suit No. 211 of 1884.

Suit for the recovery of 24 kulies of land, of which 17 were alleged to be held by the defendants Nos. 1, 2 and 3, on *chalgeni* or yearly tenure from the plaintiff, and the remaining 7 to have been in the wrongful possession of the defendants and their father since 1873. The defendants admitted the plaintiff's title to the land but claimed to be *kattugudi* or permanent tenants of the land.

Both the Lower Courts found that the *chalgeni* tenure set up was true, and the wrongful possession proved, and passed a decree as sued for with costs.

This second appeal was preferred to the High Court by the defendants principally on the grounds that as the defendants had been in possession of the lands for a long time the Lower Courts ought to have held that they were not liable to ejectment at will; and that as no notice to quit had been given by the plaintiff, the suit ought to be dismissed.

K. Narayana Rau for the appellants relied on *Abdulla Rawutan* v. *Subbarayyar*(1), where the objection as to want of notice to quit was allowed to be taken for the first time in second appeal.

* Second Appeal No. 942 of 1887. (1) I.L.R., 2 Mad., 346.

SUBBA v. NAGAPPA.

Ramachandra Rau Saheb for respondent contended that the defendants had forfeited their right to notice by their denial of plaintiff's title. *Baba* v. *Vishvanath Joshi*(1).

K. Narayana Rau in reply quoted *Paidal Kidavu* v. *Parakal Imbichuni Kidavu*(2), *Prannath Shaha* v. *Madhu Khulu*(3), which are in conflict with *Baba* v. *Vishvanath Joshi*(1).

On the first hearing of this second appeal the Court (Parker and Shephard, JJ.) made the following

ORDER :—The suit is brought to recover lands, parts of which are alleged in the plaint to have been held by the defendants on chalgeni tenure and other parts to have been wrongfully occupied by them since 1873. The defendants pleaded limitation as an answer to the whole suit and denying the alleged chalgeni lease averred that they held the land comprised in it on permanent tenure. The facts were found by the District Court in the plaintiff's favor, and the only point seriously urged in appeal, relating to the land included in the chalgeni lease, was that the defendants as tenants were entitled to reasonable notice, and reference was made to the case of *Abdulla Rawutan* v. *Subbarayyar*(4), where it was held that giving of notice being a necessary part of landlord's title to eject a tenant from year to year, objection on the score of want of notice might be taken even in second appeal. To the contention founded on this authority, it was answered that the defendants had forfeited their right to notice by their denial of the plaintiff's title, and the plaintiff's vakil relied on a Bombay case *Baba* v. *Vishvanath Joshi*(1), in which it was held that the tenant's right to notice was so forfeited by reason of his pleading in the suit a perpetual tenancy.

In so far as this case decides that a disclaimer of the landlord's title made in the suit only suffices to disentitle the tenant to notice, the case is not supported by the English authority on which it professes to be based—see *Vivian* v. *Moat*(5), and is in conflict with decisions of this Court and of the High Court of Bengal (*Paidal Kidavu* v. *Parakal Imbichuni Kidavu*(2), *Prannath Shaha* v. *Madhu Khulu* (3)). In the present case, there is evidence to show that the defendants' father asserted a kattugudi tenure in 1852 and again in 1867. But in 1869 they accepted the

(1) I.L.R., 8 Bom., 228. (2) 1 M.H.C.R., 13.
(3) I.L.R., 13 Cal., 96. (4) I.L.R., 2 Mad., 346,
(5) 16 Ch. D., 730.

chalgeni lease exhibit A from the plaintiff, and it does not appear that after that date and before the institution of the suit, the defendants repeated their assertion of the kattugudi tenure. It is therefore unnecessary to consider the question raised by the conflicting cases decided in Bombay and Calcutta (*Babá* v. *Vishvanath Joshi*(1) and *Kali Krishna Tagore* v. *Golam Ally*(2). The present case is similar to that of *Abdulla Rawutan* v. *Subbarayyar*(3), where also it would appear that the permanent tenure was set up by the tenant only in the course of the suit. We therefore remit the case for finding on the two following issues:—

(1) Whether before the institution of this suit the plaintiff gave any, and what notice, to the defendant to quit the premises comprised in the chalgeni lease.

(2) Whether such notice, if given, was a reasonable notice and in accordance with local usage.

The finding is to be on the evidence already on record and on any fresh evidence to be taken.

The provisions of the Transfer of Property Act with regard to notice are not applicable, because it is not shown that any notification making the provisions of chap. V applicable to agriculture leases has been issued—See section 117.

In compliance with the above order, the District Judge submitted his findings to the effect that notice was given in accordance with the custom of the country, and that it was in the circumstances of this case reasonable and sufficient.

On receipt of the above findings, this second appeal came on for final hearing, and the Court delivered the following

JUDGMENT:—The objections to the finding cannot be maintained.

We accept the findings upon the two issues which are in favor of the plaintiff. The result is that the appeal must be dismissed with costs. The plaintiff is entitled to his costs throughout.

---

(1) I.L.R., 8 Bom., 228. (2) I.L.R., 13 Cal., 248.
(3) I.L.R., 2 Mad., 346.