

## APPELLATE CIVIL.

*Before Mr. Justice Mitter and Mr. Justice Maclean.*

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June 11.

CHATURI SING AND OTHERS (DEFENDANTS) v. MAKUND LALL  
AND ANOTHER (PLAINTIFFS).\*

*Ejectment of Tenant holding over—Notice to quit.*

There is no difference in law between the position of a ryot holding without a patta and that of one holding over after the expiry of the term covered by a patta, with the consent of his landlord.

Such a tenant cannot be evicted without a reasonable notice to quit being given; and the relationship does not come to an end at the expiration of each year, without some act on the part of the landlord and tenant jointly, or of either of them.

*Ram Khelawan Singh v. Mussamat Soondra* (1) followed.

THIS was a suit to recover possession of five bighas four cot-tas of land, which the plaintiffs alleged were held by them under a patta, and from which they had been wrongfully evicted by the defendants. The plaint stated that the land in suit was in the occupation of the plaintiffs from the time of their father, under a patta granted by the former proprietors on the 25th Jeyt 1278 F. (corresponding with 29th May 1871); that, on the 12th July 1878, the defendants, who were the purchasers of a certain share in the estate in which the land was situated, attempted forcibly to oust the plaintiffs from it, and thereupon the latter lodged a complaint in the Criminal Court, which, on the 2nd August 1878, referred them to a civil suit; and that, under the colour of that order, the defendants had wrongfully dispossessed the plaintiffs on the same day. The defendants denied the plaintiffs' title to the land in suit, and stated that, neither they, nor their father, had ever been in possession of it,

\* Appeal from Appellate Decree, No. 213 of 1880, against the decree of Baboo Kally Prosonno Mookerjee, Subordinate Judge of Sarun, dated the 31st December 1879, reversing the decree of Baboo Tara Prosonno Banerjee, Munsif of Chapra, dated the 25th June 1879.

(1) 7 W. R., 152.

but that the land formed the zerat property of the malicks, and had been for the last two years in the khas possession of them, the defendants, who were the purchasers of eight pie, eighteen krants, nine and-a-half masants share of the estate in which it lay.

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The only issues settled in the suit were, whether the plaintiffs held the land in dispute as tenants, and whether they had been wrongfully evicted from it by the defendants.

It appeared that the patta dated the 25th Jeyt 1878 F. (corresponding with 29th May 1871) was only for one year,—namely, 1279 (1871-72).

The first Court dismissed the suit, holding that the genuineness of the patta had not been satisfactorily established, and as the plaintiffs based their title solely on that patta, the suit could not be maintained, and that they could not fall back on “mere possession;” that even if the patta was genuine, the mere fact of the landlord having permitted them to hold over for some years after its term had expired, *viz.*, till 1285 F. (1877-78), did not create in their favor any right of occupancy; and that they were, therefore, only yearly tenants, and had not been illegally ejected, as they had been ejected at the end of the year. The lower Appellate Court, however, reversed this decree, holding that the plaintiffs’ suit was not based on the patta, that being only the document under which the plaintiffs’ possession commenced; and that, therefore, the plaintiffs’ case would not, in any way, be prejudiced by their failing to prove the patta; and, in addition, the Subordinate Judge considered that the evidence was legally sufficient to prove its genuineness, and that he saw no reason to disbelieve it; that in any event there was ample evidence that the plaintiffs had been in occupation for some years on payment of rent to the malicks, and that they were, therefore, to be taken as tenants-at-will and entitled as such to a reasonable notice to quit, expiring with the end of the year, before they could be ejected.

The defendants now specially appealed to the High Court.

Mr. Sandel and Baboo Pran Nath Pundit for the appellants.

Baboo Bujunee Kant Banerjee for the respondents.

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The judgment of the Court (MITTER and MACLEAN, JJ.) was delivered by

MITTER, J.—It is found by the lower Courts, that the plaintiffs held the disputed land in jote, and were ousted by the defendants in April 1285 (1878) without any notice. It is also found, that they had not, before ouster, acquired a right of occupancy. The defendants are owners of a fractional share of the estate in which the lands lie, but they claim an exclusive right to them as their zerat. The suit was dismissed by the first Court, while the lower Appellate Court, reversing that judgment, has awarded a decree, on the ground that the plaintiffs could not be legally evicted without a reasonable notice.

It has been contended before us, that a ryot not having a right of occupancy may be evicted at the end of the year without a notice. No doubt, a ryot holding under a patta having a fixed term may be evicted without notice at the end of the fixed term. But that is not the case here. The plaintiffs allege that their father obtained a patta for one year, viz., 1279 (1871-72), and they were allowed to hold over till Assin 1285 (October 1877), when they were dispossessed. This patta was rejected as not established, by the Munsif, but the Appellate Court has expressed no final opinion regarding it, although it is inclined to believe its genuineness.

But, in the opinion of the Appellate Court, this point was immaterial. The lower Appellate Court is right in that view; because, so far as the point raised in the case is concerned, there is no difference in the law between the position of a ryot holding without a patta, or that of one holding over after the expiry of the term of a patta.

The lower Appellate Court mainly relies upon the Full Bench decision in *Rajendronath Mookerjee v. Raseedur Ruhoman Khundhar* (1). But what is decided in it is, that a suit for possession cannot be treated as a notice in the case of a ryot entitled to a notice to quit. But however, in *Ram Khelawun Singh v. Mussamut Soondra* (2), the point was decided in accordance with the view taken by the lower Appellate Court.

(1) 25 W. R., 329.

(2) 7 W. R., 152.

We also think that the view of the law taken by the lower Appellate Court is deducible from the provisions of s. 20 of Beng. Act VIII of 1869, which lays down that ryots like the plaintiffs cannot relinquish without a notice to the landlord. In our opinion it follows from this, that a landlord cannot evict such a tenant without a notice; because, in order to justify an eviction without a notice, it must be held that the tenancy, unless renewed, comes to an end at the end of the year. But if that were so the ryot could throw up the land without a notice.

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The relation of landlord and tenant cannot be said to have ceased so far as the landlord's right to evict is concerned, but not with reference to the ryots' right to relinquish. But it seems to us, that the relationship does not come to an end at the expiration of each year, without some act on the part of the landlord and tenant jointly, or of either.

If the law were otherwise, the ryots would have been placed in a very disadvantageous position. It is generally the case that ryots of this class derive their livelihood from cultivation only.

If they were liable to be evicted without notice at the end of the year, they would find in many cases, great difficulty in obtaining a suitable quantity of land for cultivation from other zemindars.

On the whole we think that the lower Appellate Court has laid down the law correctly. The appeal is dismissed with costs.

*Appeal dismissed.*