

There is nothing in the section itself to suggest that these words ought to be so construed. It is not impossible to conceive of cases where time may properly be deducted, though the commencement of the period from which time is deducted precedes the actual application for a copy of the judgment. On the facts of the present case we think it may be said that this is one of those cases. For this reason we think the appellant is entitled to deduct the period from 23rd December to 6th January, both days inclusive as such period, in the circumstances of the case, must be taken to be part of the "time requisite for obtaining a copy of the judgment."

SAMINATHA
AYYAR
v.
VENKATA-
SUBBA AYYAR.

We must, therefore, set aside the order of the District Judge and direct him to receive the appeal and proceed with it according to law. The costs of this appeal will abide the event.

IN SECOND APPEAL NO. 1215 OF 1901.—This case follows Second Appeal No. 1637 of 1901, and for the like reasons as are recorded in our judgment therein, we set aside the order of the District Judge and direct him to receive the appeal and proceed with it according to law. The costs of this appeal will abide the event.

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Bhashyam Ayyangar.

CHINNA NARAYUDU (FIRST DEFENDANT), APPELLANT,

v.

HARISCHENDANA DEO (PLAINTIFF), RESPONDENT.*

1908.
January 21.†

Landlord and tenant—Notice to quit—Suit instituted without prior notice—Assertion of permanent occupancy rights not a denial of relationship of landlord and tenant.

The assertion by a tenant of permanent occupancy rights and his denying the landlord's title to give a lease of the land to a third party is not a denial of the relationship of landlord and tenant which would render notice unnecessary.

SUIT IN EJECTMENT. A ground of defence was that plaintiff had not served proper notice on the defendant and that in consequence

* Second Appeal No. 980 of 1901, presented against the decree of F. Wolfe-Murray, District Judge of Ganjam at Berhampore, in Appeal Suit No. 77 of 1900, presented against the decree of D. Raghavendra Rao, District Munsif of Sompeta, in Original Suit No. 173 of 1899.

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DANA DEO.

the suit could not be maintained; also that the defendant held the land under permanent rights of occupancy. The District Munsif passed a decree in plaintiff's favour. The District Judge, on appeal, dealing with the question of notice, said:—"Then there is the question of no notice to quit being given him and I find with the Munsif that defendant has forfeited this right to notice to which he is entitled, because he has denied his landlord's title prior to suit as seen above. The want of such notice is therefore no obstacle to defendant's ejectment." He referred to *Unhamma Devi v. Vaikunta Hegde*(1). He dismissed the appeal.

Defendant preferred this second appeal.

V. C. Seshachariar for appellant.

P. R. Sundara Ayyar for respondent.

JUDGMENT.—A preliminary objection to the plaintiff's suit in ejectment was taken in the Courts below to the effect that no notice to terminate the defendant's tenancy was given by the plaintiff prior to bringing the suit. The Courts below overruled this plea on the ground that the defendant had denied the landlord's title, and that therefore no notice was necessary.

The documents referred to by the Courts below asserted the defendant's title as a permanent tenant and denied the plaintiff's title to give a lease of the land to a third party. This is not a denial of the relationship of landlord and tenant between the plaintiff and defendant which would render notice unnecessary.

On this ground we allow the second appeal and, reversing the decrees of the Courts below, dismiss the plaintiff's suit with costs throughout.

(1) I.L.R., 17 Mad., 219.
