

Before Sir John Edge Kt., Chief Justice, and Mr. Justice Tyrrell.

1887
June 27.

SHITAB DEI AND OTHERS (PLAINTIFFS) v. AJUDHIA PRASAD
AND OTHERS (DEFENDANTS).*

Landholder and tenant—Notice of ejectment—Determination of tenancy—Act XII of 1881 (N.-W. P. Rent Act), ss. 36, 39 (c), 40—Suit for ejectment and mesne profits—Payments by wrong-doer in possession not to be deducted from such profits.

S. 39 (c) and s. 40 of the N.-W. P. Rent Act (XII of 1881) imply that if a landholder has failed to give his tenant the written notice of ejectment required by s. 36, the tenancy is not to be treated in law as having ceased on determination of the term provided, but is to be treated as still subsisting.

Where upon the expiry of the term of a lease, but without the written notice of ejectment required by s. 36 of the Act having been given by the lessor, possession was taken and rents collected by persons claiming under a subsequent lease,—held that the tenancy of the first lessees did not cease upon the determination of the term of their lease, that the second lessees were wrong-doers in usurping possession and collecting rents and profits, and were liable in a suit for damages by way of mesne profits after deduction of a sum paid by them for Government revenue, but without deduction of what they had paid the lessor or of the expenses they had incurred in collecting the rents.

THE plaintiffs in this suit held certain lands under a lease which determined in 1289 fasli. Their lessor granted a lease to the defendants for a term commencing in 1290 fasli, and on the 15th October, 1882 the defendants took possession, demanded rents from the sub-tenants and received the rents and profits. The lessor had not given to the plaintiffs the written notice of ejectment required by s. 36 of the N.-W. P. Rent Act (XII of 1881). The plaintiffs subsequently obtained from the Revenue Court an order putting them in possession, to which the defendants and the lessor were parties. The plaintiffs then brought the present suit for mesne profits in respect of rents and profits received by the defendants subsequently to the 15th October, 1882.

The Courts below (Subordinate Judge and District Judge of Moradabad) dismissed the claim, on the ground that the plaintiffs' lease had determined prior to the period for which mesne profits were claimed, and that the omission to issue notice of ejectment under s. 36 of the Rent Act was under the circumstances immaterial. The plaintiffs appealed to the High Court.

* Second Appeal, No. 984 of 1886, from a decree of W. C. Watts, Esq., District Judge of Moradabad, dated the 3rd March, 1886, confirming a decree of Maulvi Nāsir Ali Khan, Subordinate Judge of Moradabad, dated the 12th July, 1886.

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SHITAB DEI
v.
AJUDHIA
PRASAD.

The Hon. Pandit *Ajudhia Nath* and Babu *Rutan Chand*, for the appellants.

Munshi *Hanuman Prasad*, Pandit *Sundar Lal*, and Lala *Lalta Prasad*, for the respondents.

EDGE, C. J., (after stating the facts as above, continued :—It is contended that on the determination of the term in 1289 fasli the tenancy also determined. The Rent Act must be looked at to see if this contention is well founded. S. 36 of the Rent Act enacts that if the landholder desires to eject a tenant holding only for a limited period after the determination of his tenancy, he shall cause a written notice of ejectment to be served on the tenant under the provisions of the Act. SS. 37 and 38 provide for the contents and method of serving such notice, and s. 39 gives the tenant a right within thirty days after the service of notice to contest his liability to be ejected, and provides the tribunal to determine such questions. Sub-clause (c) of s. 39 enacts that upon the determination of such questions adversely to the tenant or where no application under that section has been made, the “tenancy of the land in respect of which notice has been served shall cease.” The only construction I can put on the section is that if the landlord has failed to give the notice required by s. 36, the tenancy is not to be treated in law as determined on the determination of the term provided by the lease, but is to be treated as subsisting. S. 40, I think, also leads to the same conclusion. Under these circumstances I am of opinion that the tenancy did not determine on the determination of the term granted by the lease, and the defendants were wrong-doers in usurping possession and taking the rents and profits of the lands. The only question remaining is as to damages. It is admitted that the defendants have received Rs. 3,126. It is also admitted on both sides that Government Revenue, Rs. 1,147-13-10, has been paid, leaving a balance of Rs. 1,978-2-2. The defendants say that they have paid the landlord Rs. 875 and have incurred costs of collection of the rents. The Rs. 875 were not paid at the request of, or on behalf of, the plaintiffs; they were paid by the defendants on their own behalf wrongly out of the moneys with which the defendants had no legal or equitable right to intermeddle. The payment, if made, is no answer to the plaintiff’s claim. The plaintiffs say: You have wrongfully and in violation of my right

received Rs. 3,126. The defendants cannot claim, being tortfeasors, to deduct the costs of the collection of money they have wrongfully collected. I am of opinion that the plaintiffs-appellants are entitled to a decree for Rs. 1,978-2-2 *plus* interest thereon at the rate of 12 per cent. per annum from the 17th February, 1883, to the date of this decree, and with costs here and below, and 6 per cent. on the amount of this decree and costs until realization.

TYRRELL, J.—I entirely concur.

Appeal allowed.

Before Mr. Justice Mahmood.

MATUK DHARI SINGH (JUDGMENT-DEBTOR) v. ALI NAQI AND OTHERS
(DECREE-HOLDERS).*

Occupancy tenancy—Sale by occupancy-tenant—Decree in favour of zamindar against purchaser for mesne profits—Mesne profits how to be assessed.

Where in a suit against an occupancy tenant and his vendee, the zamindar obtained a decree for cancellation of the deed of sale, for possession of the land by ejectment, and for mesne profits from the date of suit to the date of recovery of possession,—*held* that the mesne profits awarded must be assessed as damages against the vendee as a trespasser; and that the proper measure of such damages was not the rent which was payable by the vendor, but the actual market-value of the land for the purposes of letting.

The facts of this case are sufficiently stated in the judgment of the Court.

Kunwar *Shivanath Sinha* and Munshi *Kashi Prasad*, for the appellant.

Mr. *Niblett* for the respondents.

MAHMOOD, J.—In arguing this appeal, Mr. *Kashi Prasad*, who has appeared on behalf of Mr. *Shivanath Sinha*, has not pressed the second, third, and the fourth grounds of appeal, and has confined his argument to the first and the fifth grounds of appeal. I need not therefore deal with the case beyond the scope of these grounds in the memorandum of appeal.

The facts necessary to elucidate the questions raised are that one *Jageshar* and *Musammat Abhlokhi* were occupancy-tenants of the land to which this suit relates, and on the 20th February, 1882,

* Second Appeal, No. 143 of 1887, from a decree of W. J. Martin, Esq., District Judge of Mirzapur, dated the 10th January, 1887; modifying a decree of Munshi Shankar Lal, Munsif of Mirzapur, dated the 24th September, 1886.

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SHIVAD DEB
v.
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PRASAD.

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July 5.