APPELLATE CIVIL.

1896
March 5.

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

MAZHAR RAI AND OTHERS (DEFENDANTS) *v.* RAMGAT SINGH AND ANOTHER (PLAINTIFFS).*

Landlord and tenant—Diluvion—Subsequent reappearance of land—Relinquishment of tenancy, evidence of—Act No. XII of 1881 (*N.-W. P. Rent Act*).

Act No. XII of 1881 and the Acts of a like nature which preceded it assume that a tenancy of agricultural lands once entered upon continues until determined by effluxion of time, or by mutual consent, or in one of the ways provided for by statutory enactment; but mere non-payment of rent does not of itself determine the tenancy.

Hence where the lands of certain tenants became submerged by the action of a river, and the tenants, though they ceased to pay rent during the period of the submersion, made no overt indication of their intention to relinquish the said lands, but, on the contrary, on the river again shifting its course, laid claim to lands which had emerged and which they alleged to be identical with their former holding; it was *held* that there had been no relinquishment. *Hemnath Dutt* v. *Ashgur Sindar* (I. L. R., 4 Calc., 894) not followed.

THE facts of this case are fully stated in the judgment of the Court.

Mr. *J. N. Pogose* and Pandit *Sundar Lal* for the appellants.

Messrs. *T. Conlan, Abdul Majid* and Munshi *Jwala Prasad* for the respondents.

EDGE, C.J., and BURKITT, J.—This was a suit in which the main question was as to the title to the possession of certain lands in the village of Rampur Kurraha which had been washed away by the stream of the Ganges and had subsequently been thrown up on the alteration of the course of the stream. It is common ground on both sides that the whole village of Rampur Kurraha was washed away by the Ganges changing its course, and that subsequently, about 1886 or 1887, by the Ganges altering its course, a large area of the lands of the village again appeared. It is in that area which has again appeared that the disputed lands lie.

The defendants laid claim to the lands which were claimed by the plaintiffs, and the Maharaja of Dumraon, who is the zamindar

*First Appeal No. 77 of 1894, from a decree of Babu Kishan Lal, Subordinate Judge of Ghazipur, dated the 21st December 1893.

of the village, fearing a breach of the peace, applied to the Magistrate of the district to exercise his jurisdiction under section 145 of the Code of Criminal Procedure. The Magistrate exercised that jurisdiction, and put into possession one Bhagwat Misr as a *locum tenens* until the rights of the various parties to the lands which had been given up by the Ganges had been determined by the Civil Court. The Magistrate acted under section 146. The Subordinate Judge found in favor of the plaintiffs and gave them a decree. From that decree this appeal has been brought.

It has been contended on behalf of the defendants-appellants that the plaintiffs have failed to prove their case; that they had failed to prove that they had held any occupancy-rights in the village; that they had failed to prove that they had held any occupancy-rights in the lands in dispute in this suit, and had failed to prove that they had been tenants of any description of the lands in dispute; and further, that, if the plaintiffs had been tenants of the lands in dispute, we should infer from their never having paid any rent in respect of the lands after their submergence that they had abandoned all right to the lands and relinquished their tenancy, if any. It was also contended on behalf of the appellants that the plaintiffs had failed to earmark the particular lands which they are now claiming. Further, the appellants attempted to prove that in 1874 and 1875 the particular lands now claimed by the plaintiffs, having been submerged and having at that time been given up by the river, had been leased by the Maharaja of Dumraon to other parties, and that those lands having been again submerged were the lands now claimed by the plaintiffs; the point of the argument being that the fact, if it was one, that the Maharaja of Dumraon had let these lands in 1874 and 1875 to other persons showed that, if the plaintiffs ever had any interest in the lands at all, that interest was abandoned before the letting by the Maharaja. It was pleaded by the defendants-appellants that after the lands last appeared from the river the Maharaja of Dumraon had verbally let those lands to them. The Subordinate Judge found on this latter point

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that the defendants had failed to prove any letting of the lands to them. In this Court that finding of the Subordinate Judge has not been questioned.

The general position is this. The defendants are not shown to have had at any time any interest in any lands in this village. They belong to an adjoining village. It is not suggested that the lands in dispute belong to any village other than Rampur Kurraha, and they certainly did not belong to the defendants' village. The defendants have failed to prove any letting by the zamindar to them, and all that appears is that they, being strangers to the village, laid claim to the lands and tried to seize them. The *qabuliats* on which the defendants relied to disprove the plaintiffs' case prove nothing. Those *qabuliats* must be read together in order to see how ineffective they are as evidence on the question in dispute here. Piecing these *qabuliats* together we find that an area amounting to 441 bighas was let by the Maharaja of Dumraon to the makers of these *qabuliats* in 1874 and 1875. The northern and western boundaries of the lands let by the Maharaja are given in the *qabuliats*. The southern boundary, by piecing the *qabuliats* together, is ascertainable. The eastern boundary was sand. Now within the ascertained boundaries of north, west and south these 441 bighas of land must have been, and having regard to the north, west and south boundaries, they did not extend as far as the situation of the lands now in dispute by a long way. The eastern boundary in those *qabuliats* was sand, and either in that sand or to east of it were the lands now in dispute. The lands which were leased by the Maharaja of Dumraon, to which the *qabuliats* in question relate, did not include any of the lands claimed in this suit by the plaintiffs.

On the other side, the plaintiffs alleged in their plaint that they had occupancy-rights in the lands which they claimed. The written statement may have been intended to traverse that allegation, but it certainly does not do so directly. One would rather infer from the written statement that the defendants admitted that the plaintiffs were tenants in the village of Rampur Kurraha, but

had not had possession of the lands in question. Whatever may be the effect of the pleadings, it is clearly proved in our opinion that the plaintiffs were, prior to the submergence of the village, tenants of a large area of lands exceeding that claimed in this suit within the village. We need not decide, and we do not intend to decide, whether or not the plaintiffs were occupancy tenants of the village. The extract from the *khateoni* of 1867, which is in evidence in this case, shows that Ramgat Singh, one of the plaintiffs, was a tenant of some lands in the village. No objection seems to have been taken to the *khateoni*. In the Court below the Subordinate Judge dealt with it as practically proving the plaintiff's case. All we can say is that the *khateoni* does not, in our opinion, explain itself, and we are not able to find on it whether or not Ramgat Singh held in 1867 any lands either himself or through his shikmis other than the lands entered against his name and against the names of Sheoambar Rai, Dhani Rai and Niranjan Rai, his shikmis, amounting to 120 bighas 14 biswas odd. However, there is oral evidence in the case which shows that Ramgat Rai held lands, stated variously to have amounted to between 300 and 600 bighas, in the village. We have no doubt that he held, prior to the submergence, lands at least equal in amount to those which he has claimed in this suit. There may be, and there always is, in cases of this kind, great difficulty in ascertaining and defining the exact metes and bounds of particular holdings when lands which have been submerged have subsequently been given up. It is difficult for Judges who have not been to the spot and had the lands pointed out by witnesses and heard what those witnesses had to say with the lands in sight to ascertain the precise metes and bounds of such lands. However, the parties here understand perfectly well what are the lands claimed. The plaintiffs allege that certain numbers are theirs. The defendants, on the other hand, allege that the lands claimed by the plaintiffs had been let to them. Consequently there is no difficulty about the parties not understanding the actual lands in dispute between them. We find that the plaintiffs have proved

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that prior to the submergence they were in possession of the lands which they claim in this suit as tenants.

We have been referred to the following cases:—*Afsur-ood-deen* v. *Shorooshee Bula Dabee* (1) *Hemnath Dutt* v. *Asghur Sindar* (2), *Lopez* v. *Muddun Mohun Thakoor* (3) and *Lukhi Narain Jagadeb* v. *Maharaja Jodu Nath Deo* (4). Undoubtedly, according to the view expressed in one of those cases by the Calcutta Court, the plaintiffs after the submergence of the lands held by them lost all rights of tenancy in the lands by non-payment of any rent for those lands. We cannot agree that the view of the law there expressed, though it may be sound in lower Bengal, is applicable to these Provinces. As we understand the different Rent Acts (No. X of 1859; No. XVIII of 1873 and No. XII of 1881) which have been applicable in these Provinces, the tenancy of a tenant of agricultural land can only be determined in one or other of the manners mentioned in the particular Act applicable at the time. No doubt a tenant can go to his landlord at any time and say that he abandons his tenancy, and the landlord, if he is willing, may accept the abandonment. Or a tenant of the class to whom section 31 of the present Act applies can serve a notice under that section of his desire to relinquish the land on the landlord or his recognized agent, or the landlord can obtain a decree for his rent which has not been paid, and by taking proceedings under the Act can obtain ejectment of his tenant, and there are of course other grounds upon which a landlord can obtain ejectment by order of the Court. But it appears to us that the several Rent Acts which have been applicable in these Provinces assume that a tenancy once entered upon continues until determined by effluxion of time, or by mutual consent, or in one of the ways provided for by statutory enactment, and that mere non-payment of rent does not of itself determine the tenancy.

We were asked to infer an intention on the part of these tenants to abandon their tenancy in the submerged lands. It is possible that if the landlord had, while the lands were submerged,

(1) 1 Marshall, 558.
(2) I. L. R., 4 Calc., 894.
(3) 13 Moo. I. A., 467.
(4) L. R., 21 I. A., 39.

claimed rent from them, and on their refusal to pay had obtained a decree and served notice of ejectment upon them, such an inference might be drawn; but we cannot find as a fact from their merely sitting quiet and doing nothing that they intended to relinquish all rights in land which any year might emerge from the Ganges and become culturable. We find that their tenancy did not in fact determine in any of the ways provided for by the Rent Act or by agreement, and we consequently find that when the lands did emerge from the water owing to a change in the stream of the Ganges, the plaintiffs, being still tenants of those lands, were entitled to the possession of them. The defendants have no title whatsoever. The plaintiffs are proved to have a title, but whether it is one as occupancy tenants or merely as tenants having no right of occupancy it is not necessary to consider. It is to be noticed that neither the Maharaja of Dumraon, who certainly would have an interest in showing that the plaintiffs were not entitled to this considerable area of land as tenants, particularly as occupancy tenants, nor any one of their co-villagers in Rampur Kurraha was shown to have disputed or challenged the plaintiffs' title. The plaintiffs' title is merely challenged by strangers from the neighbouring village who are not shown to have even a scintilla of right to any lands in Rampur Kurraha. We dimiss this appeal with costs.

Appeal dismissed.

Before Mr. Justice Aikman.

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March 6.

KALLU (PLAINTIFF) *v.* HALKI (DEFENDANT).*

Usufructuary mortgage—Redemption—Limitation—Act No. XV of 1877 *(Indian Limitation Act), section* 20*—Act No. I of* 1879 *(Indian Stamp Act), sections* 34, 35, 39*—Admission of unstamped document in evidence on payment of penalty—Necessity for production of document.*

Section 20 of Act No. XV of 1877 does not have the effect of extending indefinitely the period within which a usufructuary mortgage must be redeemed.

Where a Court has occasion to admit a previously unstamped document in evidence upon payment of a penalty under section 34 and the following sections

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* Second Appeal No. 74 of 1895, from a decree of Rai Shankar Lal, Subordinate Judge of Banda, dated the 27th November 1894, reversing a decree of Munshi Kalika Singh, Munsif of Hamirpur, dated the 3rd February 1894.