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following extract from a judgement of the Board of Revenue in our judgement fairly describes the position of the lambardar in a lambardari village :—" Speaking generally the lambardar is the manager of the common lands entitled to collect the rents, settle tenants, eject tenants, procure enhancement of rents, and do all necessary acts relating to the management of the estates for the common benefit." It is contended that the only remedy which the plaintiffs had in a suit like the present was a suit under section 165 against all the co-sharers for a settlement of accounts, and it is further contended that *sir* and *khudkasht* rights can never be satisfactorily taken into account except in such a suit where all the co-sharers are parties. It is to be noticed that section 165 does not specifically refer to a suit by the lambardar *as such*. No doubt the lambardar is a co-sharer and would be entitled like any other co-sharer to bring a suit for settlement of accounts. Section 165 does not provide that all the co-sharers must necessarily be parties to the suit, although no doubt in very many cases it would be convenient that they were. The objection that may be made as to want of parties is met by this answer that it is open to any party to a litigation in a proper case to ask the court to add parties. The court also can do this of its own motion. It has a jurisdiction which the court ought not to hesitate to exercise in a fit and proper case. We think that the decision of the court below was correct and should be affirmed. We accordingly dismiss the appeal with costs.

Appeal dismissed.

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February, 1.

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Muhammad Rafiq.

GANPAT RAI AND OTHERS (PLAINTIFFS) *v.* MULTAN AND OTHERS (DEFENDANTS)*.

Act No. I of 1872 (*Indian Evidence Act*), *section* 116—*Landlord and tenant — Denial of landlord's title—Estoppel.*

When once a person is the tenant of another person he cannot be allowed to deny that the person whose tenant he was, was the owner when the tenancy was created. He can no doubt admit that his landlord was the owner at the

*Second Appeal No. 1613 of 1914, from a decree of D. Dewar, District Judge of Saharanpur, dated the 5th June, 1914, confirming a decree of Abdul Hasan, Subordinate Judge of Saharanpur, dated the 28th of June, 1913.

commencement of the tenancy and allege and prove by evidence that the landlord's estate has subsequently come to an end; but he cannot deny that at the commencement of the tenancy the person with whom he entered into the contract was the owner of the property, and this disability is not removed by the cessation of the tenancy. *Bilas Kunwar* v. *Desraj Ranjit Singh*, (1) followed.

THE facts of this case were as follows :—

The plaintiffs alleged that they were the owners of a house which they had let to the defendants or their predecessors in title on the 27th of March, 1901, for three years; that the latter had executed a *kirayanama* in their favour; that the period for which the property had been leased had expired on the 27th of March, 1904; that the defendants had not paid rent, nor did they vacate the house though several times asked to do so. They accordingly sued for ejectment of the defendants and for arrears of rent.

The defendants denied the execution of the *kirayanama*; denied the landlords' title, and pleaded ownership by adverse possession.

The Subordinate Judge dismissed the suit, holding that the plaintiffs had failed to prove their title and the District Judge in appeal confirmed the decree. The lower appellate court relied on *Lal Mahomed* v. *Kallanus* (2).

The plaintiffs appealed to the High Court.

The Hon'ble Munshi *Gokul Prasad*, (for Mr. *B. E. O'Conor*, Mr. *Agha Haidar* with him), for the appellants :—

The predecessor in title of the defendants having been put into possession of the property and having executed the *kirayanama*, which had been held proved by the lower appellate court, were estopped from denying the plaintiffs' title; *Ketu Das* v. *Surendra Nath Sinha* (3). The defendants could not claim by adverse possession till they had actually restored possession to the plaintiffs after the termination of the lease; *Bilas Kunwar* v. *Desraj Ranjit Singh* (1).

Babu *Sital Prasad Ghosh*, for the respondents :—

The moment a person ceases to be a tenant section 116 of the Indian Evidence Act ceases to apply, and a person ceases to be

(1) (1915) I. L. R., 37 All., 557. (2) (1885) I. L. R., 11 Calc., 519.

(3) (11885) 7 C. W. N., 596.

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tenant as soon as he has been legally served with a notice to quit. If a tenant continues to hold on after such a notice, he does so as a trespasser and in the present case he has been so treated by the landlord; *Lal Mahomed* v. *Kallanus* (1). The landlord must be presumed to have come into legal possession on the date the tenancy terminated. The determination of the tenancy by efflux of time amounted to a surrender in law.

The Hon'ble Munshi *Gokul Prasad*, was not heard in reply.

RICHARDS, C. J., and MUHAMMAD RAFIQ, J. :—This appeal arises out of a suit for possession of a house. Both the courts below have decided against the plaintiffs. The plaintiffs allege that the relation of landlord and tenant existed between the plaintiffs and their predecessors in title and the defendants and their predecessors in title; that the defendants denied the title of the plaintiffs and that consequently they were entitled to possession. The point we have to decide is a question of law. If we decide it in favour of the appellants it is admitted that the case must go back for trial on the merits. If on the other hand we decide it in favour of the respondents it is admitted that the appeal should be dismissed. The learned District Judge held that the defendants were not estopped from denying the title of the plaintiffs because they or their predecessors in title were not originally put into possession by the plaintiffs or their predecessors in title and that consequently it lay on the plaintiffs to prove their title, which they had failed to do. The learned Judge quotes the Calcutta ruling in the case of *Lal Mahomed* v. *Kallanus* (1). Section 116 of the Evidence Act is as follows:—"No tenant of immovable property, or person claiming through such tenant shall, during the continuance of such tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property." It seems to us quite clear that once a person is the tenant of another person he cannot be allowed to deny that the person whose tenant he was, was the owner when the tenancy was created. He can, no doubt, admit that his landlord was the owner at the commencement of the tenancy and allege and prove by evidence that the landlord's

(1) (1885) I. L. R., 11 Calc., 519.

estate has subsequently come to an end, but he cannot deny that at the commencement of the tenancy the person with whom he entered into the contract was the owner of the property. The words "at the beginning of the tenancy" are expressly inserted in the section to show that the tenant is not prevented from showing that after the tenancy commenced the estate of the landlord devolved on some other person. It is urged that the moment a person ceases to be a tenant the section no longer applies. This is not the view of the law taken by their Lordships of the Privy Council in the recent case of *Bilas Kunwar* v. *Desraj Ranjit Singh* (1). In that case the defendant was put into possession by the plaintiff as tenant. He never gave up possession, but was served with a notice to quit. He subsequently sought to show that the plaintiff had no title to the property. He claimed that although he could not deny the plaintiff's title so long as the relation of landlord and tenant subsisted, the bar was removed when the tenancy came to an end on the expiration of the notice to quit. Their Lordships of the Privy Council say:—"Section 116 of the Indian Evidence Act is perfectly clear on the point, and rests on the principle well established by many English cases, that a tenant who has been let into possession cannot deny his landlord's title, however defective it may be, so long as he has not openly restored possession by surrender to his landlord."

In our opinion the view taken by the learned District Judge was not correct. If the plaintiffs can prove that the relation of landlord and tenant existed between them, or the persons through whom they claim, and the defendant, or persons through whom the defendants claim, then the defendants are not entitled to deny that the plaintiffs or the persons through whom they claim were the owners of the property during all the time the relation of landlord and tenant subsisted and right up to the time that that relationship ceased to exist.

We allow the appeal, set aside the decree of the learned District Judge, and remand the case to him under order XLI, rule 23, with directions to re admit the appeal under its original number on the file and proceed to hear and determine the same on the merits.

Appeal decreed and cause remanded.

(1) (1915) I. L. R., 37 All., 557.