

are there delivered, or to a servant sent to fetch them; and if no such demand is made the carrier is liable for the loss of or injury to the goods, although the increased charge has not been paid." The words of the English Act (1) and the words in this Act (2) are practically the same so far as this matter is concerned, and we think that the reasoning of that case applies to these cases in this country as well as in England, and that this appeal must be dismissed with costs.

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SECRETARY  
OF STATE  
FOR INDIA  
IN COUNCIL  
v.  
BUDHU  
NATH  
PODDAR.

*Appeal dismissed.*

A. A. C.

*Before Mr. Justice Prinsep and Mr. Justice Hill.*

HARIPRIA DEBI (PLAINTIFF) v. RAM CHURN MYTI AND ANOTHER  
(DEFENDANTS).\*

1892  
March 25.

*Bengal Tenancy Act (VIII of 1885), s. 188—Ejection—Joint-owners.*

Section 188 of the Bengal Tenancy Act of 1885 is no bar to a suit for ejection by one of two joint-owners when the suit is brought under the contract law on a breach of the conditions of a lease by the tenant.

THIS was a suit brought by one of two joint-owners of certain nij-jete land to eject a tenant after service of notice. Defendant No. 2, who was one of the joint-owners, refused to join the plaintiff in bringing the suit, and was therefore made a *pro forma* defendant. On the 15th Aushran 1284 (29th November 1877) the plaintiff granted a *potta* (for the purposes of cultivation and improvement) of her eight annas share of the property in the suit, containing 38 bighas and odd cottahs of land, and consisting of garden *dhosa* and *balu* lands and *gerias* (tanks), to Ram Churn Myti (defendant No. 1). The *potta*, which was duly registered, provided *inter alia* that defendant No. 1 should not, without the consent of the plaintiff, cut the trees in the garden, excavate tanks, turn *dhosa* land into *jul* land, alter the boundaries, or let any portion of the land to tenants. On the 9th Magh 1294

\* Appeal from Appellate Decree No. 388 of 1891 against the decree of Babu Dwarika Nath Bhattacharjee, Subordinate Judge of Midnapore, dated the 31st of December 1890, affirming the decree of Babu Jogendra Nath Bose, Munsiff of Contai, dated the 30th of April 1890.

(1) See 11 Geo. IV. & 1 Wm. IV, c. 68, s. 1; and 17 & 18 Vict., c. 31, s. 7.

(2) See Act IV of 1879, s. 11.

1892 (22nd January 1888) the plaintiff served defendant No. 1 with a notice to quit within six months from the date of its receipt, on the ground that he had, in contravention of the terms of his *potta*, and without the plaintiff's consent, cut trees, excavated a tank, turned *dhosa* land into *jul* land, and otherwise rendered the land unfit for the purposes of the tenancy, and that he had also granted leases to tenants.

HARIPRIA  
DEBI  
v.  
RAM CHURN  
MYTI.

The plaintiff contended that defendant No. 1 was a tenant-at-will, and that under sections 25, 45, and 155 of the Bengal Tenancy Act 1885, she was entitled to a decree for ejection. Defendant No. 1 contended that, inasmuch as defendant No. 2, the co-sharer of the plaintiff, had not joined in the notice and in bringing the suit, it was not maintainable under the provisions of section 188 of the Tenancy Act.

After more than one remand by the Lower Appellate Court, the Court of first instance gave the plaintiff a decree under section 155 for ejection, subject to the condition that if defendant No. 1 paid, within six months from the date of the decree, a certain sum fixed as compensation for waste committed by him in breach of his contract, he should not be ejected.

The Lower Appellate Court upheld the decree for ejection, modifying it by reducing the amount of compensation and by extending the time for compliance with its terms.

The plaintiff appealed to the High Court, and defendant No. 1 filed objections to the decree under section 561 of the Code of Civil Procedure, putting forward the same contention as had been urged by him in the lower Courts.

Baboo *Doorga Das Dutt* and Baboo *Mohini Mohun Roy* for the appellant.

Baboo *Jagut Chunder Bannerjee* for the respondent.

The judgment of the Court (PRINSEP and HILL, JJ.) was as follows:—

This was a suit brought by one of two proprietors of some *nij-jot* land to eject a tenant after service of notice. After considerable delay in consequence of more than one remand by the Lower Appellate Court (we think the proceedings might have been somewhat shorter), the plaintiff has obtained a decree in the terms of section 155 of the Bengal Tenancy Act for ejection

of the tenant, in the event of his not paying within six months from the date of the decree a certain sum fixed as compensation in consequence of waste committed by him in breach of the terms of his contract.

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HARIPRIA  
DEBI  
v.  
RAM CHURN  
MYTL.

The plaintiff appeals, contending that she is entitled to an absolute order for ejection; and the defendant makes an objection under section 561 of the Civil Procedure Code that the plaintiff's suit should have been dismissed, inasmuch as plaintiff is only one of two joint landlords, and, therefore, debarred by section 188, Bengal Tenancy Act, from suing separately.

We are of opinion that the plaintiff was not so barred, and that the case does not come within the terms of section 188. The right under which the plaintiff sues is not a thing which she, as landlord, is, under the Bengal Tenancy Act, required or authorised to do. The suit is brought under the contract law on breach of the conditions of a lease by the tenant. This disposes of the objection taken by the respondent.

The plaintiff's pleader contends that under the notice served by the plaintiff in Magh, she is entitled to eject the defendant, being a tenant-at-will on nij-jot land, and the ejection is sought not merely on the ground of waste and breach of contract, but also on the ground of the termination of the tenancy. It seems to us that the notice is not a good notice so as to entitle the plaintiff to what she seeks. It requires the defendant to quit the lands occupied by him within six months from the date of the receipt of the notice. Now, if it be regarded as a notice of the termination of the lease, which, as we understand it, was an annual lease, it would be terminable only at the end of the year, and this would be some months later than the expiry of six months from the date of the service of the notice. We think, however, that the notice was intended, as it has been treated by both the Lower Courts, as a notice of ejection in consequence of breach of contract by the waste committed. We agree also with the Lower Appellate Court that the case should be dealt with under section 155, Bengal Tenancy Act, and that, until the tenancy has been formally terminated by legal proceedings by declaring the lease at an end by reason of the expiry of the term for which it ran, the tenant is entitled to the benefit of section 155. The appeal is, therefore, dismissed with costs.

C. D. P.

*Appeal dismissed.*