

## APPELLATE CIVIL.

*Before Mr. Justice Pigot and Mr. Justice Gordon.*

DHORA KAIRI (DEFENDANT No. 1) v. RAM JEWAN KAIRI  
MAHTON AND OTHERS (PLAINTIFFS).\*

1890  
Sept. 12.

*Landlord and Tenant—Ejectment—Notice to quit—Under-ryot—Forfeiture  
—Denial by tenant of landlord's title—Bengal Tenancy Act  
(VIII of 1885), s. 49, cl. (b).*

The plaintiffs sued to eject the defendant from certain land, alleging that it formed part of their holding, and that the defendant was their sub-tenant. The defendant denied the plaintiff's title, and set up the title of a third person adverse to that of the plaintiffs. The lower Appellate Court found that the defendant was the plaintiff's tenant, and both the lower Courts held that the defendant by denying the title of his landlord had forfeited his rights as a tenant, and was therefore liable to be treated as a trespasser, and as such to be evicted without notice.

*Held*, that in all cases to which the Bengal Tenancy Act applies there can be no eviction on the ground of forfeiture incurred by denying the title of the landlord, and that it having been found by the lower Appellate Court that the defendant was an under-ryot of the plaintiffs, he could not be evicted from his holding except after notice to quit, as prescribed in section 49, cl. (b) of the Bengal Tenancy Act.

*Debiruddi v. Abdul Rahim* (1) followed.

THIS was a suit for ejectment and for recovery of possession of 1 bigha and 10 cottahs of land, which the plaintiffs claimed to be part and parcel of their holding comprising 11 bighas and 10 cottahs.

The plaintiffs alleged that the land was sublet to the defendant No. 1 at a rent of Rs. 25 annas 8, that they received rent up to the 8-annas kist of 1292, and that they subsequently gave him a verbal notice to quit from 1293. They further alleged that the defendant No. 1 caused a collusive suit to be instituted against

\* Appeal from Appellate Decree No. 2446 of 1889, against the decree of Baboo Nilmonce Das, Subordinate Judge of Zillah Saran, dated the 14th of September 1889, reversing the decree of Baboo Jogendro Nath Mookerjee, Munsiff of Sewan, dated the 9th of August 1888.

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himself by the defendant No. 2, the *ticcadar* of the mouzah, for arrears of rent, in which he confessed judgment, and subsequently he (the defendant No. 1) set up an adverse title against them.

The defendant No. 1 alleged that the plaintiffs had not sublet the disputed land to him, that it formed part of his father's holding, that his father gave it to him at the time of his separation, that he got his name registered in the zemindar's *sherista*, that a decree was obtained by the defendant No. 2, as the *ticcadar* of the mouzah, for arrears of rent due to him, and that, according to the plaintiffs' own case, he was entitled to notice to quit.

The defendant No. 2 generally supported the contentions of the defendant No. 1, and he further alleged that his *ticca* expired in 1292, and from 1293 it passed to one Ram Somavat Singh.

The Munsiff held that no notice to quit was necessary, inasmuch as the defendant No. 1, by admitting the title of a third person to the rent of his land, denied the plaintiffs' title, and thereby forfeited all his rights as a tenant as against the plaintiffs, and that the plaintiffs were entitled to treat him as a trespasser. He further held, however, that the plaintiffs had failed to prove that the land in question formed part of their holding, or that it was sublet to the defendant No. 1. The suit was therefore dismissed with costs.

On appeal the Subordinate Judge agreed with the view taken by the Munsiff as to the question of notice to quit, but was of opinion that it was unnecessary to decide whether the land in question formed part of the plaintiffs' holding, inasmuch as, if the plaintiffs really sublet the same to the defendant No. 1, the latter would be estopped from denying the plaintiffs' title under the provisions of section 116 of the Evidence Act. After reviewing the evidence he reversed the decision of the Munsiff, holding that the land in question was sublet by the plaintiffs to the defendant No. 1, and accordingly decreed the plaintiffs' suit.

From this decision the defendant No. 1 appealed to the High Court.

Baboo *Koruna Sindhu Mukerjee* with Baboo *Dwarkanath Chuckerbutty* for the appellant.

Baboo *Srinath Banerjee* and Baboo *Upendro Chunder Bose* for the respondents. 1890

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

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The only question for decision in this appeal is whether the defendant appellant can be ejected without notice to quit.

At first sight we were disposed to hold that in accordance with the principles of English law, which have been followed in various decisions of this Court, the lower Courts were right in holding that the defendant by setting up previous to suit a title to the land adverse to that of the plaintiffs, his landlords, forfeited all his rights as a tenant as against the plaintiffs, and was therefore liable to be treated by them as a trespasser, and as such to be evicted without notice. But in a recent decision under the Bengal Tenancy Act it has been held [*Debiruddi v. Abdur Rahim* (1)] that under that Act “in all cases to which it applies, there can no longer be any eviction on the ground of forfeiture incurred by denying the title of the landlord.” We of course follow this decision, and as it has been found by the lower Appellate Court that the defendant was an under-ryot of the plaintiffs, we must hold that he cannot be evicted from his holding except after notice to quit, as prescribed in section 49 (b) of the Bengal Tenancy Act.

This appeal is accordingly decreed, but under the circumstances of the case we make no order as to costs.

A. F. M. A. R.

*Appeal allowed.*

*Before Mr. Justice Pigot and Mr. Justice Macpherson.*

JOGENDRONATH BHARATI (JUDGMENT-DEBTOR) v. RAM  
CHUNDER BHARATI (DECREE-HOLDER).\*

1891  
June 2.

*Execution of decree—Mohunt, decree obtained by, on behalf of muth—Endowment, representation of—Succession Certificate Act (VII of 1889), s. 4.*

A decree in favour of a deceased mohunt for costs incurred in proceedings carried on by him on behalf of the *muth* may be executed by the

\* Appeal from Order No. 60 of 1891, against the order of R. H. Anderson, Esq, District Judge of Chittagong, dated the 25th November 1890.

(1) I. L. R., 17 Calc., 196.