APPELLATE CIVIL.

Before Jwala Prasad and Bucknill, J.J.

JOGENDRA SINGH

1922. *v.*

June, 28. MAHARAJA KESHO PRASAD SINGH.*

Zerait—*lessee of, whether can confer rights of occupancy.*

A lessee of *zerait* land for a term of years cannot create in such land rights of tenancy which will continue after the expiry of the term of his own lease.

Mahanth Jagarnath Dass v. *Janki Singh* (1), *Binad Lal Pakrashi* v. *Kalu Parmanik* (2) and *Kuman Das* v. *Gulam Ali Nadaf* (3), referred to.

Appeal by the defendants.

The plaintiff sued to eject 46 defendants from certain *zerait* land in which the latter claimed *raiyati* interests under settlements from a person who had been a lessee of the *zerait* land for a term of years. Some of the defendants also claimed portions of the land as their *gujashta* holding. The trial Court decreed the suit and 25 of the defendants preferred the present appeal.

The facts of the case material to this report are stated in the judgment of Jwala Prasad, J.

Lakshmi Narain Singh and *Gour Chandra Pal*, for the appellants.

Shiva Saran Lal, *Kulwant Sahay* and *Nirsu Narain Sinha*, for the respondents.

JWALA PRASAD, J.—This appeal arises out of a suit in ejectment.

The plaintiff is the Maharaja of Dumraon. Briefly speaking his case is that the land in suit

* Appeal from Original Decree No. 70 of 1919, from a decision of Maulavi Saiyid Ghalib Hasnain, Subordinate Judge of Shahabad, dated the 28th November, 1918.

(1) (1922) I. L. R. 1 Pat. 340; 49 I. A. 81.

(2) (1893) I. L. R. 20 Cal. 708, F. B. (3) (1920) 57 Ind. Cas. 323.

measuring about 125 *bighas*, situated in two *mauzas* called Katar and Batra is his *zerait* land known as Deori *zerait* land, and was let out from time to time for a fixed term of years; the last lease was in favour of Nakchhedi Lal and Ram Bahadur Singh, from 1307 to 1316; that on the expiry of this lease it was again given to Ram Bahadur Singh under the orders of the Court of Wards which was then in charge of the estate, for three years from 1317; that defendants 1 to 46 are residents of the same village and are related to each other and they in collusion and with the consent of one another took various proceedings with a view to establish their *raiyati* claim to the land in suit and to the prejudice of the plaintiffs, and refused to give up possession after the expiry of the lease in spite of the notice served upon them. The plaintiff therefore brought the present action in the Court of the Subordinate Judge of Shahabad, for recovery of possession of the land in dispute and for mesne profits.

The Court below has decreed the plaintiff's suit for possession directing the amount of mesne profits to be determined later on, evidence on which was reserved.

There were 46 defendants in this case; some of them did not enter appearance and some did not contest the plaintiff's claim, and some of them claimed portions of the disputed lands as their *gujashta* holding.

The defendants, 25 in number, have appealed to this Court and repeat the contentions which were made on their behalf in the Court below and disposed of by the learned Subordinate Judge. They dispute the finding of the Court below that the land in dispute is their *zerait* land.

The land has been described as *zerait* in all the *kabuliyats* whereby the land was in possession of the lessees from time to time. The first *kabuliyat* is dated the 20th July, 1872, for 1280 to 1286, executed by Hari Singh. The second *kabuliyat* is dated the 27th May, 1879, executed by Gopi Raut, for 1287 to 1296. The third *kabuliyat* is dated the 18th April, 1888, executed

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by Nakchhedi Lal and Rajpat Singh, for 1296 to 1306. The fourth *kabuliyat* is dated the 23rd June, 1899, executed by Nakchhedi Lal and Ram Bahadur Singh, defendant No. 1, for 1307 to 1317. All these *kabuliyats* describe the land as *zerait* of the proprietor, the lessee having covenanted not to

"Sub-let the leasehold property on *katkana* settlement unless the proprietor permits him to do so and that on the expiry of the term of lease the proprietor shall be at liberty to settle the land with whomsoever he may like."

The lessees were further prohibited from planting any tree themselves or through anybody else. This was obviously with the object of preserving the cultivable nature of the land, for the plantation of such permanent trees would impair the character of the land for cultivation purposes. In the body of these *kabuliyats* the land is described, in places more than one, as the *zerait* of the proprietor and the object of the covenants in the lease was to preserve that character. Ram Bahadur Singh, defendant No. 1, who is one of the executants of the last *kabuliyats* cannot in face of these covenants in the document contend that the land in suit was not the *zerait* of the proprietor, or that he or any of the lessees had any right to settle the land for terms exceeding those of their own.

The Dumraon Raj Treasury *chalan*, dated the 26th May, 1909, shows payment of rent of the land in dispute in the treasury of the Raj. It describes the land as *zerait* Katar and Barah Batra. This *chalan* bears the signature of lessee Ram Bahadur Singh, defendant No. 1. Even the rent-receipts filed on behalf of the defendants describe the land as *zerait*; in some of the receipts the tenants have been described as *shikmidars*, in some as *thikadars* and in others as *jotedars*. The oral evidence adduced in this case also shows that the land was commonly known as the Deori *zerait*. Even the defendant, witness No. 2, a son of the former lessee, and the lessee himself for a pretty long time admitted in cross-examination that the land in suit is called the *zerait* land. Mr. *Lakshmi Narain Singh* contended that the description in the *kabuliyats*

and in the rent-receipts only showed that the Badhar in which the land lies is called *zerait*, but that the land itself is not *zerait* in the true sense of the term as referred to in Chapter XI of the Bengal Tenancy Act. The learned Subordinate Judge has pointed out that it is true that in this case the landlord has not been able to prove that the land in question was cultivated as *zerait* by the proprietor himself with his own stock and by his own servants for twelve continuous years immediately before the passing of the Act as is required by clause (*a*) of section 120; but that the land was recognized by village usage as proprietor's *zerait* land, as is required by clause (*b*) of the section.

Now, two of the leases are of a period before the 2nd of March 1883, and these *kabuliyats* show that the land in question was let out as proprietor's private or *zerait* land. The description of the land therefore in these exhibits assuming for the sake of argument that it referred to the Badhar, shows the notoriety of the land in the locality and is evidence which, under the section, may be considered as proof of the character of the land being *zerait*. We therefore agree with the view of the Court below that the land in dispute has been proved to be the *zerait* land of the plaintiff.

Mr. *Lakshmi Narain Singh* then contends that even if the land were *zerait* land, the appellants acquired tenancy rights by being in possession thereof as tenants for a long period, more than twelve years prior to the institution of the suit. This contention is based upon the rent-receipts filed in this case. All these receipts are of the time of the lessees. There is no receipt of a prior date. These defendants claim that they were let into the occupation of the land by the lessees of the Dumraon Raj from time to time and, although they did not take any settlement directly from the Raj, they are entitled to claim the tenancy right against the Raj. The proposition put forward by Mr. *Lakshmi Narain Singh* appears to me to be fundamentally unsound. Tenancy is created by

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contract, either express or implied, between the landlord and the tenant, or by statute. In the present case there was no privity between the Raj and the defendants There was, therefore, no tenancy created by contract. The lessees had no authority to settle the lands and to create *raiyati* interest therein. Therefore the Dumraon Raj, proprietor of the land, is not bound by the settlement made by its lessees in excess of the rights conferred upon them by the several leases. Now, their possession over the land for a number of years would not in the least create by statute any tenancy right in them as against the Dumraon Raj, inasmuch as there must be at the inception a tenancy created by a contract between the landlord and the tenant; and holding possession of the same as a tenant or *raiyat* for a continuous period of twelve years might under the statute called the Bengal Tenancy Act create a right of occupancy against the will of the landlord. As observed above, these defendants did not take any settlement of the land directly from the Maharaja, nor was there any acquiescence on the part of the Raja in their holding possession of the land. After the expiry of the lease no receipt has been granted by the Raj and there was therefore no recognition and consequently no implied contract of tenancy in favour of the defendants.

Mr. *Lakshmi Narain Singh* relied upon the well-known case of *Binad Lal Pakrashi* v. *Kalu Parmanik* (1), in support of his contention that, although the lessees of the *zerait* land had no occupancy right themselves, and were merely trespassers after the expiry of the lease, yet the right created by them in favour of the defendants will be binding upon the real proprietor, the Maharaja of Dumraon. I have tried to quote the essence of that ruling in the way that Mr. *Lakshmi Narain Singh* put it so as to make it applicable to his contention; but that is not the essence of the ruling, nor is that principle deducible either directly or by implication from anything observed by

(1) (1893) I. L. R. 20 Cal. 708, F.B.

their Lordships in that case. There the title was unknown. The man in possession of the subject-matter and exercising all the powers and functions of a title-holder made settlement with tenants who *bonâ fide* believed that the lessor had title in him. It ultimately turned out that the lessor was only a trespasser, and that the real proprietor was a third person. Here there was no mistake as to the rights of the lessees who are said to have granted the tenancy right to the defendants. It was well known that the proprietor of the land was the Maharaja of Dumraon. It was equally known that the lessees had only limited interest for a fixed term of years. Therefore the principle of that ruling will not apply, and it was pointed out in a later case, which I appropriated in my decision in the case of *Kuman Das* v. *Gulam Ali Nadaf* (1) that the case of *Binad Lal Pakrashi* v. *Kalu Parmanik* (2), "is an encroachment upon the ordinary rule of law, *viz.*, a grantor is not competent to confer upon the grantee a better title than what he himself possesses and it must be cautiously applied and is not to be extended." The result will be disastrous if the decision in that case were extended to apply to the facts of the present case. A lessee then holding for a term of years, say for five years, who after the expiry of that term ceases to hold the land, will upon the contention of Mr. *Lakshmi Narain Singh* be able to grant a permanent right of tenancy to a third person without the permission and knowledge of the landlord. Nothing will be more profitable than to take a lease of short term and to settle it on large premiums with third persons giving them permanent right of occupancy against the landlord. The proposition is preposterous. Here, the lease of defendant No. 1 expired in 1917 and was extended by permission of the Court of Wards, which then had charge of the property, till 1319 *Fasli*. After the expiry of the lease defendant No. 1 became a trespasser. All sub-tenants described as *shikmidars*, *thikadars* and *jotedars* (call them by whatever term you

(1) (1920) 57 I. C. 323. (2) (1893) I. L. R. 20 Cal. 708, F. B.

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like) must also go with the lessee, defendant No. 1. They did not ever acquire the right to remain on the land even for a moment beyond what defendant No. 1 had. The title was derived from defendant No. 1, and the previous lessees, and their title extinguished also with the title of the former. Therefore the rent receipts in the present case do not help the defendants.

The survey entry in the record-of-rights was then relied upon; but this entry also does not help the defendants, for in respect of the Katar land the rights of the defendants have been described as *qaimi zerait*, and in respect of the land in *Mauza* Barah Batra the defendants 1 to 6, the lessees, are shown as holding the land as their *bakasht*, some in their own possession and most of it in possession of the remaining defendants. Therefore the survey entry described the land as *zerait* and the *bakasht* of defendants 1 to 6, the lessees. It cannot in any way support the claim of the defendants. The effect of this survey entry would seem to have been nullified by the decision of this Court, dated the 27th March, 1916, in a proceeding by the defendants against the plaintiff. The defendants appellants in the present case disputed the right of the Maharaja to distrain the crops for arrears of rent describing the land as having been settled with defendant No. 1, the lessee. The contention of the defendants was, in that case as in the present one, that they were the tenants of the land and that the defendant No. 1 was tenure-holder and consequently the distraint proceedings, which applied only to the case of cultivating tenants, were illegally instituted by the Maharaja. It was held there that the cultivating tenant was Ram Bahadur Singh, lessee, who was defendant No. 2 in that case, and that the defendants appellants in the present case, the appellants before us, could not claim to be tenants of the land as holding directly under the Maharaja. The leases in the present case were all construed as conferring only the right of cultivation in the land in suit upon the lessees including defendant No. 1. In this view the lessee

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was a *raiyat* for a term of years, and a *raiyat* cannot create a tenancy right in favour of another extending his own term. For all considerations we think that, after the expiry of the lease not only the lessee defendant No. 1 but all the defendants, who may have been holding the land under a settlement made by him, must be treated as trespassers [*Mahanth Jagarnath Dass* v. *Janki Singh* (1)]. As the landlord is therefore entitled to recover *khas* possession of the land, the defendants are also liable for mesne profits.

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The appeal must, therefore, be dismissed with costs to the plaintiff respondent only who has contested the appeal.

[The remainder of the judgment is not material to this report.]

BUCKNILL, J.—I agree.

Appeal dismissed.

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Before Dawson Miller, C. J. and Mullick, J.

SAGARMAL MARWARI

v.

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Appeal—limitation—terminus a quo—*judgment signed but not pronounced until a later date—Code of Civil Procedure*, 1908 (*Act V of* 1908), *Order* XX, *rules* 1 *and* 7—*Limitation Act*, 1908 (*Act IX of* 1908), *Schedule* 1, *Article* 156.

A decree should bear the date on which the judgment is delivered in open Court and the period of limitation for an appeal runs from that date and not from the date on which the judgment is written and signed.

"The day on which judgment is pronounced" (Order XX, rule 7, of the Code of Civil Procedure 1908) is the day on which it is pronounced in open Court under rule 1.

The facts of the case material to this report are stated in the judgment of Dawson Miller, C. J.

(1) (1922) I. L. R. 1 Pat. 340; 49 I. C. 81.