

Judge of Dacca we are not able to make this comparison, nor is it necessary to do so in the view which I take of the matter.

The appeal will, therefore, be decreed with costs.

FOSTER, J.—I agree.

Appeal decreed.

1923.

K. B. DUTT

v.

TARA-

PRASANNA

ROY

CHAUDHURY.

APPELLATE CIVIL.

Before Mullick and Bucknill, J.J.

SHEGOBIND RAM SAHU

v.

MAHIPAT DUSADH.*

1923.

July, 9.

Zerai—lease of—tenant inducted by lessee, whether can acquire occupancy rights—Bengal Tenancy Act, 1885 (Act V of 1885), section 20.

Where a lessee of *zerai* land is not restricted by the terms of his lease from settling the land with a tenant and the land is in fact legally settled with a tenant by the lessee, the tenant holds as a *raiyyat* within the meaning of section 20 of the Bengal Tenancy Act, and when he has so held for 12 years his occupancy right is complete.

Binad Lal Pakrashi v. Kalu Pramanik(1), referred to.

Jogendra Singh v. Maharaja Kesho Prasad Singh(2), distinguished.

Appeals by the plaintiffs.

The facts of the case material to this report are stated in the judgment of the Court.

Lachmi Narain Sinha (for *Tribhuan Nath Saha*), for the appellants.

Baikuntha Nath Mitter, for the respondents.

* Second Appeals Nos. 1088 to 1092 of 1921, from a decision of Babu Jatindra Chandra Bose, Subordinate Judge of Saran, dated the 15th April, 1921, reversing a decision of Babu Charu Chandra Mitra, Munsif of Sewan, dated the 24th July, 1920.

(1) (1893) I. L. R. 20 Cal. 708, F.B. (2) (1922) I. L. R. 1 Pat. 764.

1823.

SHEEOGOBIND
RAM SAHUv.
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DUSADE.

MULLICK AND BUCKNILL, J. J.—The plaintiffs are landlords of the village in which the disputed lands lie and on the 9th August, 1919, they instituted five suits against the defendants for declaration of title and recovery of possession.

The defendants pleaded an occupancy right but the trial Court found in favour of the plaintiffs and decreed the suits.

In appeal the Subordinate Judge of Saran has set aside the decrees of the Munsif and dismissed the suits. Hence these second appeals.

It appears that on the 24th February, 1919, a record-of-rights was finally published showing the defendants to be occupancy *raiyats* of the lands in suit. The onus therefore falls upon the plaintiffs to show that the entry is incorrect and the Subordinate Judge, after balancing the evidence on both sides, has come to the conclusion that the plaintiffs have failed to discharge that onus. The history of the lands appears to be this. The village in which they lie was leased to the Banscopali factory sometime previous to 1907. It is found that previous to the expiry of their lease the factory inducted the defendants upon the lands. There is no written lease. It is presumed, therefore, that the lease must have been oral. On the 15th September, 1910, the plaintiffs obtained a compromise decree against the Banscopali factory by which the factory was directed to deliver up possession of the village including the lands in suit and it is alleged that from that date the title of the plaintiffs accrued. This is no doubt correct and if it could be proved that the plaintiffs had taken possession on or about that time or that they had taken steps to declare the tenancy held by the defendants to be invalid as against them the defendants would not have been competent to plead that they had been holding the lands as *raiyats*, so as to attract the operation of section 20 of the Bengal Tenancy Act. But no such evidence has been adduced by the plaintiffs and the learned Subordinate Judge

finding that the record-of-rights shows the defendants to be occupancy *raiyats* and finding that the onus which rested upon the plaintiffs to show that the defendants were not entitled to the benefit of the provisions of section 20 of the Bengal Tenancy Act had not been discharged was, in our opinion, right in deciding in favour of the defendants.

The suits for ejection, brought by the plaintiffs, were lodged on the 9th August, 1919, and the trial Court's decrees were passed on the 24th July, 1920. Execution of those decrees was stayed from the 7th January, 1921, to the 12th January, 1921, and on the 15th April, 1921, the appeals preferred by the defendants succeeded and the suits were dismissed. It is urged by the learned Vakil, for the appellants before us, that the time between the 7th January, 1921, and the 15th April, 1921, should, under the provisions of section 15 of the Indian Limitation Act, be excluded and that if that is done the defendants would not be entitled to plead the terms of section 20 of the Bengal Tenancy Act. But this is not the case. The record-of-rights shows that the title of the defendants was complete by the 24th February, 1919, and, therefore, as the suits of the plaintiffs were not lodged till six months later, the question of excluding the period during which the execution of the decrees was stayed by injunction does not arise.

The learned Vakil then relies upon the case of *Jogendra Singh v. Maharaja Kesho Prasad Singh* (1). The facts of that case, however, were quite different and it was there held that where a lessee having been specially restricted by his lease from sub-letting *zerait* land to a tenant contravenes the terms of his lease and makes such a settlement the tenant is not entitled to plead the principle laid down in the case of *Binad Lal Pakrashi v. Kalu Pramanik* (2). But in this case it is established that the *thikedar* gave a settlement which he was entitled to give and where a tenant has been

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inducted according to law, I think, section 20 of the Bengal Tenancy Act will always apply. In my opinion the case of *Binad Lal Pakrashi v. Kalu Pramanik* (1) is still good law where a tenant has been inducted legally and *bonâ fide* and where there is nothing to show that the tenant acquired his title without knowing that his lessor had a defective title or no title at all. Here the lessor had title, the tenant was duly inducted upon the land, and he is holding as a *raiyat*, within the meaning of section 20 of the Bengal Tenancy Act, for a period of more than twelve years. Therefore his occupancy right is complete and the suits for ejectment must fail. The suits are dismissed with costs in appeal No. 1089 of 1921 only. In the other appeals there is no appearance on behalf of the respondents and there will be no order as to costs.

Appeals dismissed.

APPELLATE CIVIL.

Before Mullick and Bucknill, J.J.

MAHADEO SINGH

v.

DHOBBI SINGH.*

Code of Civil Procedure, 1908 (Act V of 1908), Order XXI, rules 22 and 90—Application to set aside sale on ground of irregularity, second appeal, whether lies.

Order XXI, rule 22, does not contemplate that a fresh notice must be served for every application for execution made more than one year after the last order against the judgment-debtor.

There is no appeal from an appellate order confirming an order of the first court refusing to set aside an execution sale

* Appeal from Appellate Order No. 62 of 1923, from an order of Babu Ram Chandra Chaudhuri, Subordinate Judge of Monghyr, dated the 19th January, 1923, confirming an order of Babu Nand Kishore Chaudhuri, Munsif of Jamni, dated the 10th July, 1922.

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

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