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A verbal application would have sufficed and in the present case the officer who directed the refund of the money was not, in my opinion, acting as a Court or disposing of any proceeding required by the Act.

MULLICK, J.

In these circumstances the sanction required by section 195 was not necessary and the reference cannot be accepted.

BUCKNILL, J.—I agree.

APPELLATE CIVIL.

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

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Nov., 7.

RAMCHARAN SINGH

v.

SHEO DUTTA SINGH.*

Court-Fees Act, 1870 (*Act VII of* 1870), *section* 7(xi)(cc)—*Suit to eject* thikadar *on expiry of lease.*

A suit to eject a *thikadar* after the expiry of his lease falls within section 7(*xi*)(*cc*) of the Court-Fees Act, 1870.

All cases in which the landlord seeks to recover property from a person who has been his tenant and whose tenancy has come to an end, and cases in which the landlord is entitled to enter by reason of some breach of covenant, are governed by section 7(*xi*)(*cc*).

The word "tenant" in clause (*cc*) includes a person to whom that description would apply immediately before the commencement of the suit but who is liable to ejectment by reason of the termination of his tenancy.

Appeal by the defendant.

The plaintiffs sued in the Court of the Munsif to eject the defendant, who was a *thikadar*, on the expiry of his lease, and, treating the suit as one for the recovery of immoveable property from a tenant holding over after the determination of the tenancy, valued the

* Second Appeal No. 761 of 1920, from a decision of A. Tuckey, Esqr., Judicial Commissioner of Chota Nagpur, dated the 14th June, 1920, affirming a decision of H. D. Christian, Esqr., Munsif of Chatra, dated the 20th March, 1920.

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suit at one year's rent under section 7 (*xi*) (*cc*) of the Court-Fees Act. The defendant pleaded that his interest was a permanent interest created by the plaintiff's predecessors and, also, that the suit was not governed by section 7 (*xi*) (*cc*) but section 7 (*v*) (*c*) or (*d*). The Munsif held that the defendant was a lessee for a term and that his tenancy having determined he was liable to be ejected. He also held that the suit had been correctly valued by the plaintiff, and decreed the suit. The defendant appealed to the Officiating Judicial Commissioner of Chota Nagpur who affirmed the decision of the first Court.

Bankim Chandra De, for the appellant.

Sheonandan Rai, for the respondents.

DAWSON MILLER, C. J.—This is an appeal on behalf of the defendants from a decision of the Judicial Commissioner of Chota Nagpur, dated the 14th June, 1920, affirming a decision of the Munsif of Chatra.

The respondents are the *jagirdars* of *mauza* Kedli Khurd. The appellant Ramcharan Singh was until just before the date of this suit the *thikadar* of the *mauza*. The suit was instituted in 1917 to eject the defendant on the expiry of his lease. Several defences were set up by the appellant, the main one being that his interest had not terminated but was a permanent interest created by the predecessors of the plaintiffs. It is not disputed that the plaintiffs who are the respondents before us were the owners of the property and it is not disputed that the appellant was the *thikadar*. The only question between them with regard to that part of the case was whether the appellant had a permanent interest or merely a temporary interest which expired, as the respondents say, shortly before the institution of the suit. In addition to the main defence which was decided in favour of the respondents by both the Munsif and the Judicial Commissioner on appeal, whose decision on that point is not now questioned, the appellant raised a question which went to the jurisdiction of the Munsif to try the suit. In filing their

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plaint the respondents treated the case as one governed by section 7, paragraph (*xi*), clause (*cc*) of the Court-Fees Act, namely, a case for the recovery of immoveable property from a tenant including a tenant holding over after the determination of the tenancy. The court-fee payable in such a case is the amount of the rent of the property in suit payable for the year before the presentation of the plaint. Acting upon that they valued the suit at Rs. 300 which was one year's rent and treated it as a suit in which the Munsif had jurisdiction. The appellant questioned that course and said that the case was not governed by paragraph (*xi*) of section 7 but came under one of the earlier paragraphs of the same section, namely, paragraph (*v*), clause (*c*) or (*d*) and that it ought to be either fifteen times the net profits or the market value of the property in suit. Before us to-day it has been contended that the proper valuation for the purposes of jurisdiction ought to be the market value of the property and that if the market value is ascertained it will appear that the suit is one which ought to be valued at something over Rs. 1,000, the limit of the jurisdiction of the Munsif, and, therefore, the suit ought not to have been tried by the Munsif and ought to be dismissed as being without jurisdiction.

The first question to determine, and if that is decided in favour of the respondents it puts an end to this appeal, is whether the case is covered by paragraph (*xi*) of section 7 of the Court-Fees Act. That paragraph in so far as it is material for the purposes of this case reads as follows :

"7. The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:—

* * * * * * * * *

(*xi*) In the following suits between landlord and tenant:—

* * * * * * * * *

(*cc*) for the recovery of immoveable property from a tenant, including a tenant holding over after the determination of a tenancy;

According to the amount of the rent of the immoveable property to which the suit refers, payable for the year next before the date of presenting the plaint."

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The appellant's contention is that in the present case he is not, upon the findings of the lower Court, a tenant at all, and that, his tenancy having in fact terminated before the institution of the suit, he is no more than a trespasser and the suit should have been valued for the purposes of jurisdiction as in other cases where a person seeks to recover immoveable property, namely, the market value of the property. It is quite clear, to my mind, from reading the paragraph to which I have referred, that it relates to suits for the recovery of immoveable property from a person who has been a tenant but whose tenancy has expired and he is holding over even against the will of his landlord because, as pointed out by the learned Judicial Commissioner, it cannot be assumed that the clause only refers to cases where the tenant is holding over with the consent of his landlord. It can hardly be expected that provision would be made for cases of a suit for ejectment where the landlord really is consenting to the tenant remaining on. If he is consenting to the tenant remaining and holding over, then it is hardly likely that he would bring a suit, so that one is driven to the conclusion that this clause at all events relates to some cases in which the tenancy has in fact come to an end and the landlord is entitled to re-enter. Once one arrives at that conclusion I cannot help thinking that the clause was intended to refer to all cases where the landlord seeks to recover the property from a person who has been his tenant and whose tenancy has come to an end or where the landlord by reason of some breach of covenant is entitled to re-enter. The word tenant as there used seems to be to include a person to whom the description would apply immediately before the commencement of the suit but whose tenancy has terminated entitling the landlord to eject him. If the section applies only to cases where the defendant is still the tenant of the landlord it is difficult to conceive any case to which the section would apply except where the landlord is entitled to re-enter by reason of a breach of covenant or to cases where the landlord must necessarily fail. The majority of cases in which a suit to eject a tenant

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is brought are cases where the tenancy has terminated and the tenant refuses to quit and I consider that the word tenant as used in the section was intended to cover such cases. In my view the circumstances of the present case, namely, a tenant who was the *thikadar* and whose *thikadari* interest has expired but who refuses to quit, whatever the reason may be, comes within the clause (*cc*) of paragraph (*xi*) of the section, and that section applies where in such circumstances the landlord brings a suit to eject him. For these reasons I think that the decisions both of the trial Court and of the learned Judicial Commissioner on appeal were right and ought to be affirmed and the appeal dismissed with costs.

ROSS, J.—I agree.

Appeal dismissed.

REFERENCE UNDER THE COURT-FEES ACT, 1870.

Before Jwala Prasad, J.

ANAND RAM PRAMHANS

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Oct., 31.

Appeal—date of presentation—memorandum presented to Assistant Registrar, in the absence of the Registrar during vacation—Rules of the Patna High Court, 1916, *Chapter II, rules* 13(iii), 14 *and* 16—*Court-Fees Act,* 1870 (*Act VII of* 1870)—*Bihar and Orissa Court-Fees (Amendment) Act,* 1922 (*B. & O. Act II of* 1922).

A memorandum of appeal presented to the Registrar during the vacation must be taken to be filed on the day on which it is actually presented to the Registrar. But when a memorandum of appeal is presented during the vacation to an officer who is not empowered to receive it, and it is put up before the Registrar on the re-opening of the High Court, it must be deemed to have been presented on the date on which the High Court re-opened.