1924.

HARI GIR v. KUMAR KAMAKHYA NARAYAN SINGH.

DAS, J.

Court in *Chandri* v. *Daji Bhua* (1). It was held in that case that the possession of a tenant holding over is wrongful, and if there is no evidence from which a fresh tenancy can be inferred in the strict sense of the term, time begins to run against the landlord when the period of the fixed lease expires. In that case there was a lease for a year. At the end of the year the premises were not given up, nor was any rent paid. The suit was brought more than twelve years after the expiry of the lease. The defendant contended that the plaintiff's claim to recover possession was barred and the High Court gave effect to that contention and dismissed the suit.

In my opinion the decision of the learned Subordinate Judge on this point cannot be supported and the plaintiff's claim for possession must be dismissed.

The next question is whether the plaintiff is entitled to a declaration that the underground leases granted in this case are void and inoperative. He is clearly entitled to that declaration and the defendants have not challenged the accuracy of the finding of the learned Subordinate Judge on this point before us.

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

Ross, J.—I agree.

Appeal decreed in part.

APPELLATE CIVIL.

Before Das and Ross, J.J.

1924.

Feb., 29.

GAYANI DAS

v.

DWARKA MANDAR.*

Bengal Tenancy Act, 1885, (*Act VIII of* 1885), *Schedule III, Article* 3—*land settled by tenant with others—tenant*

*Appeal from Original Decree No. 105 of 1921, from a decision of M. E. A. Khan, Subordinate Judge of Bhagalpur, dated the 24th February, 1921.

(1) (1900) I. L. R. 24 Bom. 504.

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GAYANI DAS v. DWARKA MANDAR.

dispossessed by landlord—suit for recovery of possession—limitation.

Where a person to whom 1,100 *bighas* of *nakdi jote* land had been let, and who had settled the land with tenants, was dispossesed by the landlord, and sued for recovery of possesion, *held*, that the suit was governed by Article 3, Schedule *III* of the Bengal Tenancy Act, 1885.

For the purpose of determining whether a person is a *raiyat* within the meaning of Article 3, the test is not the use which the tenant has made of the land leased to him but the purpose for which the land was leased.

Appeal by the plaintiff.

Article 3 of Schedule III of the Bengal Tenancy Act, 1885, which is referred to in the judgment, provides that the period of limitation for a suit to recover possession of land claimed by the plaintiff as a *raiyat* or under-*raiyat* shall be two years from the date of dispossession.

Raiyat is defined in section 5 of the Act which runs as follows:

Section 5. (1) "Tenure-holder" means primarily a person who has acquired from a proprietor or from another tenure-holder a right to hold land for the purpose of collecting rents or bringing it under cultivation by establishing tenants on it, and includes also the successors in interest of persons who have acquired such a right.

(2) "*Raiyat*" means primarily a person who has acquired a right to hold land for the purpose of cultivating it by himself, or by members of his family or by hired servants, or with the aid of partners, and includes also the successors in interest of persons who have acquired such a right.

Explanation.—Where a tenant of land has the right to bring it under cultivation, he shall be deemed to have acquired a right to hold it for the purpose of cultivation, not withstanding that he uses it for the purpose of gathering the produce of it or of grazing cattle on it.

(3) A person shall not be deemed to be a *raiyat* unless he holds lands either immediately under a proprietor or immediately under a tenure-holder.

(4) In determining whether a tenant is a tenure-holder or a *raiyat*, the Court shall have regard to—

(*a*) local custom; and

(*b*) the purpose for which the right of tenancy was originally acquired.

(5) Where the area held by a tenant exceeds one hundred standard *bighas*, the tenant shall be presumed to be a tenure-holder until the contrary is shown.

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GAYANI DAS v. DWARKA MANDAR.

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

S. P. Varma (with him *Jadubans Sahay*), for the appellant.

K. P. Jayaswal (with him *Susil Madhab Mullick*, *Satya Saran Bose*, *Nirode Chandra Roy* and *Subodh Chandra Mozamdar*), for the respondents.

DAS AND ROSS, J.J.—This appeal arises out of a suit instituted by the appellant for possession of certain lands described in the schedule annexed to the plaint as:

"1,100 *bighas* of *nakdi jote* situate in *mauza* Dildarpur Mal, *Tauzi* No. 4995, and *mauza* Dildarpur Tanfir, T.N 52, *thana* Nathnagar, district Bhagalpur, included within the following boundaries."

Then follows the boundaries, not of the demised lands but of the *mauza* within which the demised lands are situate.

The learned Subordinate Judge has dismissed the suit on a variety of grounds In my opinion the decision of the learned Subordinate Judge is right and must be affirmed.

It is unnecessary to deal with all the grounds made in the memorandum of appeal. It is sufficient to say that the plaintiff's suit is clearly barred by limitation. The learned Subordinate Judge has found that if the plaintiff was ever in possession of the disputed lands, he was clearly dispossessed on the 7th of March, 1917. The suit was instituted on the 3rd of January, 1920. The plaintiff's case is that he was dispossessed by the defendants first party acting in collusion with the defendants second party. It may be stated that the defendants first party are the proprietors of the *mauza* in question; the defendants second party are the lessees under the defendants first party; and the plaintiff's case is that on the expiry of the lease, in favour of the defendants second party, he obtained a *hukumnama* from the proprietors allowing him to cultivate 1,100 *bighas* of lands within the *mauza*. Clearly then the case in the plaint is one of dis-

possession by the landlords; and to such a suit Article 3, Schedule III of the Bengal Tenancy Act applies. Mr. *Varma*, on behalf of the appellant, argues before us that his client is not a *raiyat*, and, therefore, Article 3 has no application to the suit; but the *hukumnama* upon which he relies shows that he is a *raiyat*. The critical words in that document are as follows :

"I permit you under this *parwana* to cultivate the said lands—boundaries whereof are given below—for this year."

It is contended before us that there is evidence that the plaintiff settled tenants upon the land. That may be so; but the test is not the use which the tenant has made of the land but the purpose for which the land is leased. Clearly under the *hukumnama* the land was let to the plaintiff to enable him to cultivate it. That being so, Article 3. Schedule III of the Bengal Tenancy Act clearly applies.

It is unnecessary to go into the other points raised in the appeal, because, in our opinion, the learned Subordinate Judge was right in dismissing the suit on the ground of limitation.

The appeal is dismissed with costs. There will be two sets of costs payable to the defendants first party and the defendants second party.

Appeal dismissed.

REVISIONAL CIVIL.

Before Adami and Bucknill, J.J.

NAND LAL

v.

NATH MULL SRINIWAS.*

1924.

Feb., 29.

Provincial Insolvency Act, 1920 (*Act V of* 1920), *section* 23—*Protection order—arrest of judgment-debtor under*

*Civil Revision No. 473 of 1923, from an order of J. F. W. James, Esqr., I. C. S. District Judge of Patna, dated the 12th December, 1923.