APPELLATE CIVIL.

Before Das and Ross, JJ.

1928.

March, 2.

DAMODAR PRASAD TEWARI

v.

LACHMI PRASAD SINGH.*

Transfer of Property Act, 1882 (*Act IV of* 1882), *section* 106—*lease not governed by—notice ought to be reasonable—question of fact—landlord having granted a lease, whether competent to maintain a suit for ejectment against trespasser.*

A landlord, though he has given a lease to a third person, is entitled, for the purpose of putting his lessee in possession, to maintain a suit to eject a trespasser.

Raj Kumar v. *Ali Mia* (1) and *Somai Ammal* v. *Vellayya Sethurangam* (2), followed.

In the case of a lease not governed by section 106, Transfer of Property Act, 1882, the notice to quit need not necessarily determine the lease at the end of the year of the tenancy, but it must be reasonable. It is, however, for the final court of fact, in each case, to determine what is a reasonable notice.

Pratap Narain Deo v. *Harihar Singh* (3), followed.

Kishori Mohan Roy Chowdhry v. *Nand Kumar Ghosal* (4), not followed.

Appeal by the plaintiff.

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

S. N. Bose and *Mihir Nath Mukherji*, for the appellant.

S. M. Mullick and *S. N. Dutt*, for the respondents.

* Appeal from Appellate Decree no. 1195 of 1925, from a decision of H. R. Meredith, Esqr., I.C.S., Additional District Judge of Monghyr, dated the 20th April, 1925, confirming a decision of Pandit Ram Chandra Choudhuri, Additional Subordinate Judge of Monghyr, dated the 22nd September, 1923.

(1) (1923) 37 Cal. L. J. 94.
(2) (1915) 26 Ind. Cas. 347.
(3) (1909) I. L. R. 36 Cal. 927.
(4) (1897) I. L. R. 24 Cal. 720.

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DAS, J.

DAS, J.—In this suit the plaintiff who is the appellant in this Court sued to recover possession of certain property from the defendants. The defendants held under a lease from 1312-1319. Since then they have held over, and the plaintiff says that he has determined the lease by a notice to quit, dated the 7th June, 1921. It may be mentioned that the notice found to have been served on the defendants called upon them to make over possession of the leasehold property to the plaintiff on the 31st December, 1921. The suit was resisted on various grounds; but the courts below have entered upon two of them, and, in view of their decision, did not consider it necessary to decide the other issues raised between the parties. It appears that on the 14th February, 1922, the plaintiff gave a lease of the property which is the subject matter of this suit to Saradendu Bhusan Banarji, and the Courts below have dismissed the plaintiff's suit substantially on the ground that, having granted a lease to Saradendu on the 14th February, 1922, the plaintiff had not a present right to possession and was therefore incompetent to maintain a suit of this nature. The Courts also went into the question of the validity of the notice to quit; but the lower appellate Court differing from the Court of first instance has come to the conclusion that there was no " fatal defect " in the notice.

I will first consider the question whether the plaintiff is entitled to maintain the suit. I am of opinion that he is so entitled. It seems not to have been appreciated in the Courts below that Saradendu was not bound to bring a suit on the footing of his lease but was entitled to call upon the present plaintiff to put him in possession of the property. As between the plaintiff and the defendants the plaintiff is clearly entitled to be put in possession of the land. I take the following passages from the judgment of Mukharji, J. in *Raj Kumar* v. *Ali Mia* (1) " In the

(1) (1923) 37 Cal. L. J. 94.

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case of *Bissesuri Dabeea* v. *Barada Kanta Roy Chowdhury* (1), Sir Richard Garth C.J., stated that it is open to a landlord, where his title is in jeopardy from the aggression of a neighbouring zamindar and where his title may be damaged by a denial of his rights over the land, to bring a suit for the purpose of having his rights declared as against such wrongdoer and for the purpose of being put into possession of the land as against them."

It is no doubt true that in the case cited the plaintiffs obtained a declaration for being put in possession as against the trespasser through a tenant; but in my opinion the landlord is not bound to implead a tenant in a suit of this nature. The identical point has been decided by the Madras High Court in *Somai Ammal* v. *Vellayya Sethurangam* (2). It was there held that a landlord though he has given lease to a third person is entitled for the purpose of putting his lessee in possession to maintain a suit to eject a trespasser. In my opinion this question must be decided in favour of the plaintiff.

The next question is as to the validity and the sufficiency of the notice to quit. Section 106 of the Transfer of Property Act provides that in the absence of a contract or local law or usage to the contrary, a lease of immoveable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice expiring with the end of a year of the tenancy. It is conceded that this being an agricultural lease section 106 of the Transfer of Property Act has no operation. But it was contended that though section 106 does not apply in terms, the principle of the section applies, and, that therefore the notice calling upon the defendants to make over possession of the disputed property at the end of the English year and not at the end of a year of the tenancy is bad. In dealing with a point

(1) (1884) I. L. R. 10 Cal. 1076. (2) (1915) 26 Ind. Cas. 847.

of this nature Sir Francis Maclean in *Kishori Mohun Roy Chowdhry* v. *Nand Kumar Ghosal* (1) said that "There being no authority to the contrary in this country we see no reason, nor has any reason been suggested, why the rule of English law should not be applicable to such a tenancy as the present in this country, and we think that six months' notice, terminating at the end of the year of the tenancy is the notice to which a tenant, under such a tenancy as that in this case is entitled. Though the case does not come within section 106 of the Transfer of Property Act, our view is consistent with the principle of that section in regard to tenancies in which a yearly rent is reserved." This case has been followed in the Calcutta High Court. Speaking for myself I have very great objection to anything being put as high as an unvarying and inflexible rule of law which has not the sanction of the legislature behind it. Dealing with the cases upon which reliance is placed by Mr. S. M. Mallick in this Court Sir Lawrence Jenkins in *Pratap Narain Deo* v. *Harihar Singh* (2) made the following observations:—"The state of the authorities on the question of notice cannot be regarded as satisfactory; and, all that we are able to say sitting as a Division Bench is, that there must be a reasonable notice and that the notice need not necessarily determine the tenancy at the end of a year. But it will be for the final Court of fact, in each case, to determine what is reasonable notice having regard to all the circumstances, and whether it would not be reasonable in the circumstances, of the particular case for it to determine with the year." In my opinion Sir Lawrence Jenkins put the doctrine of notice in cases of this nature on its proper footing and we should follow that decision. In this case the learned District Judge had before him the view of the Court of first instance that "the defendants should not have been ordered to quit at the end of the English year when the paddy crop

(1) (1897) I. L. R. 24 Cal. 720. (2) (1909) I. L. R. 36 Cal. 927.

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might be standing and that it would be more equitable to ask them to leave at the end of the Fasli year." He considered that matter and thought that there was no fatal defect in the notice. In my opinion the finding of the learned District Judge on the question of notice is a finding of fact.

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I would, therefore, allow this appeal, set aside the judgment and the decree passed by the Court below and remand the case to the lower appellate Court with instruction that it should remit the case to the Court of first instance so that that Court may determine the issues which have not yet been determined. Costs will abide the result.

ROSS, J.—I agree.

PRIVY COUNCIL.

J. C.*
1928.

March, 8.

HITENDRA SINGH

v.

MAHARAJA OF DARBHANGA.

Hindu Law—Transfer to Wife—Wife's power to alienate —Gift for consideration—Mithila Law—Hiba-bil-ewaz—Mahomedan Law—Transfer of Property Act (IV of 1882) section 8.

A Hindu governed by the Mithila executed a document which stated that he had made a hiba-bil-ewaz (gift for consideration) of certain immovable property together with all zamindari rights to his wife on receiving from her Rs. 41,530, and that she was to hold the property from generation to generation, without demand by him, his heirs and representatives against her, her heirs and representatives. The Rs. 41,530 was paid, and was applied to discharge an execution upon the property.

Held, that having regard to the terms of the document the wife took an absolute interest with power to alienate.

*Present: Lord Phillimore, Lord Blanesburgh and Mr. Ameer Ali.