

that the lessor could not, without express power being reserved, come on the lands or to the banks of the stream to exercise the rights of fishing ”.

Channell, J., adds:—“ By an ordinary lease of land the soil and banks of a river clearly pass to the tenant, and that prevents the landlord going there for the purpose of fishing unless there were a reservation in the lease permitting him to go there, and therefore that prevents the landlord from taking the fish ”.

Thus the legal proposition stated by the Court of Appeal is supported by authorities; and it may be said that the settlement of land carries with it the right to fish when there is water upon it unless and until the landlord shows that the fishing right was reserved to him. Such being the legal position the issue becomes purely one of fact and having regard to the finding of fact arrived at by the learned Subordinate Judge the appeal must fail. It is accordingly dismissed with costs.

FAZL ALI, J.—I agree.

Appeal dismissed.

APPELLATE CIVIL.

Before Fazl Ali and Chatterji, JJ.

AMBIKA PRASHAD SINGH

v

ACHAMBIT THAKUR.*

1929.

*April, 24.
May, 14.*

Bengal Tenancy Act, 1885 (Act VIII of 1885), section 44 (c) and Schedule III, Article 1 (a)—word “ lease ” used in Article 1 (a), whether refers to registered lease.

*Appeal from Appellate Decree no. 866 of 1926, from a decision of W. H. Boyce, Esq., r.c.s., District Judge of Darbhanga, dated the 24th February, 1926, reversing a decision of Babu Gopal Chander De, Munsif of Samastipur, dated the 25th July, 1925,

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Article 1 (a) of Schedule III, Bengal Tenancy Act, 1885. provides the period of limitation for a suit to eject a non-occupancy raiyat on the ground of expiration of the term of his lease.

Held, that the Article must be read along with section 44 (c) of the Act, and that the word 'lease' as used in the Article must be taken to refer to a registered lease.

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

B. N. Mitter and *K. N. Moitra*, for the appellant.

Janak Kishore, for the respondent.

FAZL ALI, J.—This appeal arises out of a suit for ejectment in which the plaintiff also claimed mesne profits. The facts of the case are briefly these—

One Mangal Tatwa had some lands in mauza Ghargara in the district of Darbhanga. He died in 1321 and was succeeded by his widow who also died in 1327. Then his brother Dukharan came in possession of the lands and the plaintiffs purchased 2 bighas 10 kathas 8 dhurs of land from him by a sale deed dated the 4th July, 1921. The plaintiffs' case is that the plaintiff no. 1 who is the karta of the family settled one of the plots (plot no. 592) the area of which is about 5 kathas 15 dhurs with the defendants first party on batai for 1330 Fasli. The defendants, however, continued to be in possession of the land after giving produce for the year 1330 to the plaintiffs. The defendants' case, on the other hand, is that Dukharan having abandoned the holding the landlords obtained possession of it and the defendants who are thikedars under the landlords are accordingly in possession of the land. The Court of first instance believed the case of the plaintiffs and decreed the suit. The lower appellate court also upheld the findings of fact arrived at by the Court of first instance but dismissed the suit on the ground that it was barred by limitation. The question of limitation arose in this manner. One of the points raised by the

defendants was that according to the plaintiffs' own case the defendants first party were under-raiyats and consequently they could not be ejected without being served with a notice to quit the land. To this the reply of the plaintiffs was that the plaintiffs were co-sharer landlords in the village and that under section 22 of the Bengal Tenancy Act the defendants first party must be treated as raiyats under them and not as under-raiyats. The view taken by the learned District Judge was that under Schedule III of the Bengal Tenancy Act a suit to eject a non-occupancy raiyat should be brought within six months of the expiration of the period for which the lands had been settled with the defendants first party and as the suit was not brought within six months, the defendants first party could not be ejected.

In my opinion the view taken by the learned District Judge that the suit was barred by limitation under Schedule III is not correct. Article 1 (a) of Schedule III provides the period of limitation for a suit to eject a non-occupancy raiyat on the ground of the expiration of the term of his lease. Now, this Article is to be read along with section 44 of the Bengal Tenancy Act which says that a non-occupancy raiyat shall be liable to ejectment only on one or other of the grounds mentioned in the section and not otherwise. One of the grounds is mentioned in clause (c) of the section which runs thus—

"Where he (the non-occupancy raiyat) has been admitted to occupation of the land under a registered lease on the ground that the term of the lease has expired."

Thus the word "lease" as used in Article 1 (a) must be taken to refer to a registered lease and as there was no registered lease in this case, it is clear that the suit cannot be held to have been barred by limitation under Article 1 (a) of Schedule III of the Bengal Tenancy Act. There is, however, another difficulty which arises in this case. Once it is conceded that the defendants first party are non-occupancy raiyats,

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it must be held that under section 44 of the Bengal Tenancy Act they are liable to ejectment only on one or more of the grounds mentioned in that section and not otherwise. In this case it has not been shown that any of the conditions mentioned in section 44 are present and the defendant first party had made themselves liable to ejectment on one or more of the grounds mentioned in that section. That being so, it must be held that the suit has been rightly dismissed by the lower appellate court.

The learned Advocate for the appellant, however, contends that the lower appellate court should not have treated the defendants first party as non-occupancy raiyats. I am afraid, however, this position cannot be consistently taken up by the learned Advocate for the appellant at this stage when it was urged on behalf of the appellants themselves before the District Judge that the defendants should be treated as non-occupancy raiyats and when on that ground the District Judge was asked to hold that the defendants first party were not under-raiyats and that no notice to quit was in the circumstances of the case necessary. In my opinion the appeal must fail and be dismissed but without costs.

CHATTERJI, J.—I agree.

Appeal dismissed.

APPELLATE CIVIL.

Before Fazl Ali and Chatterji, JJ.

RAM LAL GOPE

v.

KALI PRASAD SAHU.*

1929.
April, 30.
May, 1, 14.

Code of Civil Procedure, 1908 (Act V of 1908), section 105 and Order XLI, rule 18—Appellant's failure to file

*Appeal from Appellate Decree no. 360 of 1928, from a decision of Babu Narendra Nath Chakravarty, Subordinate Judge of Monghyr, dated the 29th August, 1927, affirming a decision of Babu Ananta Nath Banerji, Munsif of Monghyr, dated the 22nd September, 1926. -