APPELLATE CIVIL.

1934.

November, 5.

Before Macpherson and James, JJ.

RAI BAHADUR DALIP NARAYAN SINGH

v.

SURAJ NARAYAN MISSIR.*

Rent, suspension of—occupancy holding held at lump rental—eviction by landlord from a portion of the holding—tenant, whether entitled to suspend payment of entire rent—holding held at a rate of rent per bigha—eviction from portion—apportionment of rent, when justified—equitable course to be followed—doctrine of suspension, whether limited to cases of lease governed by Transfer of Property Act, 1882 *(Act IV of* 1882).

Where the tenancy is held at a lump rental, the eviction of the occupancy raiyat by the landlord, either from a part of his holding or from the whole, entails a suspension of the entire rent, while the eviction lasts.

The rule by which the suspension of rent is allowed, if a tenant is evicted from a portion of his holding, is not limited to a case where the tenant holds under a lease governed by the Transfer of Property Act, 1882.

Dwijendra Nath Ray Chaudhury v. *Aftabuddi Sardar*(1), followed.

Per MACPHERSON, J.—Even in the case of an ordinary dispossession by the landlord of an old established raiyat from a portion of his holding held at a rate of rent per bigha, mere apportionment of the rent cannot fail to occasion grave disquiet. The value of such a tenancy often depends upon enjoyment of the whole of it, and it might well be that if the landlord dispossessed his tenant of a comparatively small but important part of the tenancy, the value of the latter would so deteriorate that mere non-realisation of the proportionate amount of rent would be an entirely inadequate compensation. It would be the same if the landlord dispossessed the raiyat of

* Appeal from Appellate Decree no. 1246 of 1933, from a decision of Babu Anjani Kumar Sahay, officiating Subordinate Judge of Monghyr, dated the 10th August, 1933, reversing a decision of Babu Atal Bihari Sharan, Munsif of Monghyr, dated the 21st July 1932.

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a large slice or of the best lands with the result that the holding became uneconomic. The sound course is to determine what is equitable in the particular case, and that might range from the apportionment of rent per bigha where the dispossession is trivial or slight, in a rapidly rising gradient to entire suspension where the interference with the enjoyment of the tenancy is considerable.

Katyayani Debi v. *Udoy Kumar Das*(1), explained.

Appeal by the plaintiff.

The facts of the case material to this report are set out in the judgment of James, J.

Bepin Bihari Saran, for the appellant.

Rajkishore Prasad, for the respondents.

JAMES, J.—This second appeal arises out of a suit for arrears of rent. The tenant, who is an occupancy raiyat, took the defence that he had been evicted at the instance of the landlord from an area of about 40 bighas contained in his holding. The Subordinate Judge found that the defendants had been evicted from an area of two bighas at the instance of the landlord; but for the remainder of the area from which they had been evicted, he failed to find that the eviction was at the landlord's instance, not permitting the defendants to prove this owing to his misreading of their written statement; but since the landlord had evicted his tenant from the area of two bighas he allowed suspension of rent and dismissed the suit.

The simple question for decision is whether the Subordinate Judge in thus allowing suspension of rent committed any error of law. The learned Advocate for the appellant suggests that in this case the rent was at a certain rate per bigha and not a lump rental; but the plaint states that the defendants have 122 bighas odd at an annual rent of Rs. 250, and it does not appear to have been suggested in the Courts below that the rental was anything but a lump

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rental. The learned Advocate suggests that we should at this stage take into evidence certain bahis of the landlord wherein this holding is said to be described as held at varying rates per bigha; but whatever the value of this evidence might have been, if it had been tendered at the proper time, it cannot be taken at this stage, where we have only to decide whether the Courts below properly applied the law to the facts found in the evidence before them. The learned Advocate suggests that the rule by which the suspension of rent is allowed, if a tenant is evicted from a portion of his holding, can only be applied where a tenant holds under a lease governed by the Transfer of Property Act; but it is only necessary to refer to the case of *Dwijendra Nath Ray Chaudhury* v. *Aftabuddi Sardar*(1) where in discussing the correctness of an entry made in the record-of-rights, the learned Judges remarked: "The true position is that the eviction of the tenant, whether from part of the demised premises or from the whole, entails a suspension of the entire rent, while the eviction lasts, whether the tenant remains in possession of the residue or not".

The learned Advocate suggests that there is no hard and fast rule by which suspension of rent must necessarily be allowed when a tenant has been evicted from a portion of his holding; but the question is whether the learned Subordinate Judge has committed an error of law in allowing suspension of rent in this case. That question must be answered in the negative; and indeed it must be said that the course taken by the learned Subordinate Judge was the correct course in the circumstances.

I would dismiss this appeal with costs.

MACPHERSON, J.—I agree.

I should like to add an observation. It would be disastrous in this province if the doctrine of suspension of rent as applied to a tenancy with a lump rental

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should be whittled down. And even in the very improbable event that it could be shown that the land of this or any other long-standing holding in this province is held at so much per bigha, it would generally not be in accordance with equity to decree the rent for the balance of the annual rental after deducting the proportion of rent representing 2 bighas (or 40 bighas as the case may be) of which the landlord has dispossessed the raiyat. The statement of their Lordships of the Judicial Committee in *Katyayani Debi* v. *Udoy Kumar Das*(1) " The doctrine of suspension of payment of rent, where the tenant *has not been put in possession* of part of the subject's lease.....has no application to a case where the stipulated rent is so much per acre or bigha ", on which is based the contention that proportionate rent should be decreed in such cases, does not really support the claim. It is to be read with reference to the case under the consideration of their Lordships in which the lease of 1433 (or even 1720) acres at so much per bigha had been given in 1878 including, apparently by mistake, a proportionately small area of 61 acres, to which a third party (actually the appellant's husband) had established paramount title dating from 1875. There is a wide difference between such a case and the ordinary dispossession by the landlord of an old-established raiyat from a portion of his holding. In the latter case a practice of mere apportionment of the rent could not fail to occasion grave disquiet. The value of such a tenancy often depends upon enjoyment of the whole of it, and it might well be that if the landlord dispossessed his tenant of a comparatively small but important part of the tenancy, the value of the latter would so deteriorate that mere non-realisation of the proportionate amount of rent would be an entirely inadequate compensation. It would be the same if the landlord dispossessed the raiyat of such a large

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slice or of the best lands with the result that the holding became uneconomic. Perhaps the sound course is to determine what is equitable in the particular case, and that might range from the apportionment of rent per bigha where the dispossession is trivial or slight, in a rapidly rising gradient to entire suspension where the interference with the enjoyment of the tenancy is considerable. For instance, if in the present instance the rent per bigha could have been ascertained and the landlord was found to have dispossessed the tenant of 40 bighas out of 122 bighas contained in the holding, entire suspension of rent could not be held to be unreasonable.

Appeal dismissed.

PRIVY COUNCIL.

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J. C.* December, 14.

MAHARAJA SRISCHANDRA NANDY

v.

BAIJNATH JUGAL KISHORE.

On Appeal from the High Court at Patna.

Mining—Demise of Coal-mines—Encroachments before demise—Lessee's right to sue—Construction of Lease—Limitation—Adverse Possession—Removal of coal from mine—Absence of publicity.

A demise of three plots of land which were being worked as a coal mine and "all those coal mining rights or other rights of and in the said plots of coal land together with..... all privileges, advantages, appurtenances appertaining or belonging thereto or usually enjoyed with same", does not enable the lessee to sue in respect of encroachments upon the mine which occurred before the date of the demise.

Whether or not the wrongful working and removal of coal from part of a mine is adequate in continuity and extent to amount to adverse possession by the defendants, it is not adequate in publicity if they fail to show that the plaintiff or

* *Present*: Lord Blanesburgh, Lord Thankerton, and Sir Lancelot Sanderson.