APPELLATE CIVIL.

Before Agarwala and Rowland, JJ.

1936.

March, 24, 25.

MAHARAJA KUMAR RAM RANBIJAYA PRASAD SINGH

v.

DEOKI AHIR.*

Agra Tenancy Act, 1926 (*U. P. Act III of* 1926), *section* 19 —*statutory tenants, tenants holding land under leases for a term which had not expired at the date Act III of* 1926 *came into operation, whether can acquire the status of*—" *Retrospective effect* ", *meaning and applicability of.*

The plaintiff instituted suits against tenants who held land under leases for a term and which had not expired at the time the Act of 1926 came into force and who under the terms of the United Provinces Tenancy Act of 1901 had the status of non-occupancy raiyats, liable to be ejected on the expiry of the term of the lease. The defendants pleaded that they had acquired the status of statutory tenants, and succeeded. In second appeal it was contended that the Act of 1926 was not retrospective and defendants were liable to be ejected.

Held, that at the time when the Act of 1926 came into operation the lessor had not the right to present possession of the lands, and, therefore, no question as to whether the Act was retrospective in its effect arose.

The right of the landlord to possession was one which would have accrued only on the expiry of the terms of the leases and was not one which had accrued at the time when

* Appeal from Appellate Decrees nos. 1521 to 1538, 1541, 1543, 1548, 1574, 1575, 1578 of 1931, from a decision of S. K. Das, Esq., I.C.S., District Judge of Shahabad, dated the 21st August, 1931, confirming a decision of Babu Jamini Mohan Mukharji, Munsif at Buxar, dated the 4th April, 1930 and of Maulavi Md. Yahia, Munsif of Buxar, dated the 12th and 31st May, 1930.

Numbers 920, 987, 988 of 1933 from a decision of Babu Rabindra Nath Ghosh, Subordinate Judge of Shahabad, dated the 19th June, 1933, confirming a decision of Maulavi Kabiruddin Ahmad, Munsif of Buxar, dated the 16th April, 1932.

Numbers 1018 to 1023 of 1933, from a decision of Babu Rabindra Nath Ghosh, Subordinate Judge of Shahabad, dated the 11th May, 1933, confirming the decision of Babu Kapildeva Sahay, Munsif of Buxar, dated the 19th and 24th September, 1931.

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the new Act came into force. The new Act did not take away any right which the landlord had in the past, that is to say, before the Act of 1926 came into operation, or which he had at the moment when that Act came into operation but merely one which would have accrued to him, under the Act of 1901, in due time. *West* v. *Gwynne*(1), followed.

Section 19 of the Act provides that every person who is a tenant of land (not being a sub-tenant) at the commencement of the Act shall be called a "statutory tenant" and is expressed to apply to "every person who is a tenant". A Court is not entitled to read the section as though it were "every person except those holding on leases for a term at the time that the Act comes into operation".

Appeals by the plaintiff.

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

S. M. Mullick (with him *Ramnandan Prasad* and *Rajeshwari Prasad*), for the appellant.

Parsuram Prasad Varma, for respondents in Appeals nos. 988 and 1521.

S. N. Ray, for respondents in Appeals nos. 1523, 1533, 1534, 1538, 1541, 1543, 1570, 1574, 1575, 1578, 1019, 1021, 1022 and 1023.

Harians Kumar, for guardian *ad litem* in no. 1527.

B. N. Mitter (with him *K. N. Moitra* and *J. N. Sahai*), for respondents in Appeal no. 1548.

Harnarayan Prasad, for respondents in Appeal nos. 920 and 987.

AGARWALA, J.—The plaintiff-appellant, the Maharaja of Dumraon, instituted, in March, 1929, twenty-eight suits to eject tenants of land in Jaunhi Diara. The defendants had been inducted on to the land under registered kabuliats for a term; in each case the term was for seven years. At the time when

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the kabuliats were executed the demised land was in the district of Ballia in the United Provinces. Owing to a change in the course of the deep stream of the river Ganges in November, 1926, the land became part of the district of Shahabad, in this province. Up to the 7th September, 1926, the tenancy law governing the land was the United Provinces Act II of 1901. On the 7th September, 1926, a new Act (The Agra Tenancy Act, III of 1926) came into operation and the Act of 1901 was repealed. Under the Act of 1901 the defendants in the present suit were non-occupancy tenants liable to be ejected by the landlord on the expiry of the term of their leases. Under the new Act of 1926, it is contended on behalf of the defendants, they have acquired the status of statutory tenants within the meaning of section 19 of that Act, and, therefore, the landlord is not entitled to possession of the demised lands during the lifetime of the tenants and five years thereafter.

The only question that has been argued by Mr. S. M. Mullick, who appeared for the appellant in the majority of the cases, and whose arguments have been adopted by the learned Advocate appearing in the remaining cases, is whether the decision of the court below that the defendants have acquired the rights of statutory tenants within the meaning of section 19 of the Agra Tenancy Act III of 1926 is correct or not. It may be mentioned, however, that it has been found by the courts below in some of the suits out of which these appeals have arisen that the defendants have acquired occupancy rights in the land; and in some of the suits it was also found that the plaintiff's right to recover possession was barred by limitation. With regard to the question that was argued by Mr. S. M. Mullick, namely, the status of the defendants, it is contended that section 19 of Act III of 1926 has no retrospective effect and, therefore, that the rights which the plaintiff had up to the time of the passing of that Act are not affected by the

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Act. In the present case the right which is alleged to have been affected is the right of the Maharaja to recover possession of the land on the expiry of the terms of the leases, which right was expressly mentioned in the kabuliats. The argument, in my opinion, reveals a confusion of thought about the meaning of the word "retrospective" as applied to statutory provisions. The meaning of this term was considered in *West* v. *Gwynne*(1) by Buckley, L. J. in a case which arose under section 3 of the Conveyancing Act of 1892. That section provided that in all leases containing a restriction against alienation without the consent of the lessor it should be deemed that there was a proviso to the effect that no fine, or sum of money in the nature of a fine, should be payable for or in respect of such consent. It was argued in that case that this section did not have retrospective effect and, therefore, that the statutory proviso could not be read into leases which had been executed before the Conveyancing Act of 1892 came into operation. With regard to the argument Buckley, L. J. said,

"During the argument the word 'retrospective' and 'retroactive' have been repeatedly used, and the question has been stated to be whether section 3 of the Conveyancing Act, 1892, is retrospective. To my mind the word 'retrospective' is inappropriate, and the question is not whether the section is retrospective. Retrospective operation is one matter. Interference with existing rights is another. If an Act provides that as at a past date the law shall be taken to have been that which it was not, that Act I understand to be retrospective. That is not this case. The question here is whether a certain provision as to the contents of leases is addressed to the case of all leases or only of some, namely, leases executed after the passing of the Act. The question is as to the ambit, and scope of the Act, and not as to

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the date as from which the new law, as enacted by the Act, is to be taken to have been the law ".

Now, in the cases before us, at the time when the Act of 1901 ceased to operate and the new Tenancy Act of 1926 came into operation, the lessor had not the right to present possession of the lands. That was a right which would, in due course, have accrued to him, but it was not a right which he had at the time when the new Act came into force. The new Act has not taken away any right which he had in the past, that is to say, before the Act of 1926 came into operation, or which he had at the moment when that Act came into operation. It has merely taken away a right which would have accrued to him in due time but which had not in fact then accrued. In this view of the matter, it seems to me that the argument with regard to the " retrospective effect " of the statute is irrelevant in the present case. Nor can I find anything in the statute to indicate that it was intended to have the effect contended for, namely, to leave untouched the position of landlords whose lands were held on leases at the time the Act of 1926 came into operation. The material portion of section 19 is as follows :—

" Subject to the provisions of sub-section (3) of section 8, every person who is, at the commencement of this Act, a tenant of land not being a permanent tenure-holder or a tenant with a right of occupancy or a tenant holding from a permanent tenure-holder, shall be called a statutory tenant and, subject to the provisions of this Act, shall be entitled to a life-tenancy of his holding ".

There follows a proviso that no statutory rights shall accrue in favour of a sub-tenant and that no sub-tenant shall be deemed a statutory tenant. The section provides that " every person " who is a tenant of land (not being land of the excepted class) at the commencement of the Act, shall be called a statutory tenant. To accept the construction which the learned Advocate for the appellant seeks to put on this section, it would be necessary to read after the words " every person ", restrictions against those

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persons who were holding under leases for a term at the time when the Act came into operation. That was very much like what was sought to be done in the case of *West* v. *Gwynne*(1), already referred to, and which the court of appeal declined to do. Kennedy, L. J. in reference to this argument, said,—

"The opening words, 'In all leases', prima facie negative a distinction between leases made before and leases made after the passing of the Act. Nor is there anything in the context to prevent or modify this inference. In order to give the section the limited application for which the appellant contends, you must add by implication after the words 'all leases' some such words as 'made after the passing of this Act' ".

Their Lordships held that they were not entitled to do this. The opening words of section 3 of the Conveyancing Act "in all leases" were held to be perfectly general and not to be confined to leases executed after the passing of the Conveyancing Act. Similarly, section 19 of the Act of 1926 is expressed to apply to "every person" and we are not entitled to read it as though it were "every person except those holding on leases for a term at the time that the Act comes into operation". There is all the less reason to import this limitation into the section in the present cases in view of the fact that the legislature has itself omitted it while expressly barring the acquisition of statutory tenancy rights by sub-tenants and making the operation of section 19 subject only to the provisions of sub-section (*3*) of section 8. Sub-section (*3*) of section 8 has no bearing on the question we have to decide. Mr. Mullick contends that the landlord's right to re-enter has not been taken away by section 19. Section 8(*1*) of the Act, however, provides as follows:—

"Every agreement which purports, or would operate, to restrict a tenant from enforcing or exercising any right conferred on or secured to him by this Act is void to that extent".

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It is contended that this sub-section does not affect a contract which was in existence when the Act came into operation. In the first place the generality of the expression "every agreement" has not been limited and, therefore, on the analogy of *West* v. *Gwynne*(1), full effect must be given to it. Secondly, a comparison of the language of section 8(*1*) of the Act of 1926 with that of the corresponding section of the Act of 1901, namely, section 3(*1*), shews that it was not the intention of the Legislature to make any exception in favour of the existing agreements. Section 3(*1*) of the Act of 1901 was as follows:—

"Notwithstanding anything contained in section 2, nothing in any lease or agreement made between a landholder and a tenant on or after the first day of April, 1900, shall take away or limit any right of the tenant as conferred or recognised by this Act."

The Legislature, therefore, when it intended to save rights under certain agreement, i.e. agreements made before a certain date, said so. There is no such provision in the Act of 1926.

For these reasons I would dismiss these appeals, except nos. 1521, 1533, 1534 and 1538, with costs. There will be separate pleaders' fee for each batch of the respondents represented at the hearing.

In Second Appeals nos. 1521, 1533, 1534 and 1538 petitions of compromise have been presented to-day. Let these petitions be filed and these four appeals be disposed of in terms of the petitions.

In Second Appeal no. 1533 respondents 4 and 5 having died and the appeal having abated as against them an application to set aside the abatement has been made on behalf of the appellant. The respondent agreed to the abatement being set aside. Let this be done and let the heirs of the deceased respondents be substituted in the appeal.

In Second Appeal no. 1534 respondent no. 2 has died and the appeal has abated as against him. It is

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agreed that the abatement be set aside and that his heirs be substituted in the appeal. Let this be done.

ROWLAND, J.—I agree.

The words of the statute are wide and I have no doubt that they apply not only to tenancies in existence at the commencement of the Act but to affect contracts entered into before the Act and intended to be fulfilled after its commencement.

Appeals dismissed.

AGARWALA, J.

REVISIONAL CIVIL.

Before Agarwala and Rowland, JJ.

1936.

March, 25, 26, 30.

MAHARAJADHIRAJ SIR RAMESHWAR SINGH

v.

MAHABIR PASI.*

Limitation Act, 1908 (*Act IX of* 1908), *Schedule I, Article* 110—*Bengal Tenancy Act*, 1885 (*Act VIII of* 1885), *section* 193 *and Schedule III, Article* 2(*b*)—*suit to recover money due on account of settlement of date and toddy palm trees, if governed by Article* 110 *of the Limitation Act or Article* 2(*b*) *of the Bengal Tenancy Act.*

Held, that suits to realize money due on account of settlement of date and toddy palm trees are not rent suits but suits of a Small Cause nature and are governed by Article 110 of the Limitation Act.

Deb Nath Ghose v. *Pachoo Mollah*(1), *Jatindra Mohan Lahiri* v. *Abdul Aziz Meah*(2), *Jhakur Sahu* v. *Raj Kumar Tewari*(3), *Maung Kywe* v. *Maung Kala*(4) and *Natesa Gramani* v. *Tangavelu Gramani*(5), followed.

* Civil Revisions nos. 687 to 689 of 1935, from an order of S. Bashiruddin, Esq., District Judge of Darbhanga, dated the 18th July, 1935, affirming an order of Babu B. K. Sarkar, Munsif, 2nd Court, Darbhanga, dated the 28th July, 1934.

(1) (1866) 6 W. R. (Civ. Ref.) 8.
(2) (1920) 59 Ind. Cas. 595.
(3) (1936) 160 Ind. Cas. 186.
(4) (1926) I. L. R. 4 Rang. 503.
(5) (1914) I. L. R. 38 Mad. 883.