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property which belonged to the tenants before they became mukarraridars. If the mukarrari right was annihilated the person in whose interest it is annihilated is entitled to get the proprietary interest free from the mukarrari right, but he cannot get the lands which the mukarraridars held prior to the creation of the mukarrari right and independently of the mukarrari lease.

FAZL ALI, J.

In these circumstances, in my opinion, the appeal fails and it should be dismissed with costs to defendants 1 to 9 and 11 to 26 and 49. It may be mentioned here that although defendant no. 47 was impleaded as a respondent in this case, the appeal was not pressed against him. It will, therefore, also be dismissed as against him with costs.

WORT, J.—I agree.

Appeal dismissed.

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February, 17, 18. March, 11.

Before Courtney Terrell, C.J., Macpherson and Fazl Ali, JJ.

DHANU PATHAK

v.

SONA KOERI.*

Estoppel—representation by plaintiff that he was a tenure-holder—plaintiff, whether can plead that he was a raiyat and not tenure-holder—estoppel against statute—Evidence Act, 1872 (*Act I of* 1872), *section* 115.

Where the plaintiffs brought a suit to eject the defendant on the ground that they were raiyats and the defendant was an under-raiyat and the defence *inter alia* was that the plaintiffs having represented themselves as tenure-holders were estopped from pleading that they were raiyats and the

* Letters Patent Appeal no. 13 of 1935, from a decision of the Hon'ble Mr. Justice Khaja Mohamad Noor, dated the 17th December, 1934.

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courts below found that the plaintiffs had in fact made such a representation :

Held, that the plaintiffs having represented themselves as tenure-holders could not be permitted to enter into a discussion of this question of fact but must be held bound by their own representation and there was no question of estoppel against the statute, the misrepresentation not being to the knowledge of the defendants to defeat the statute (section 46 of the Chota Nagpur Tenancy Act, 1908).

Appeal by the plaintiffs.

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

The case was first heard by Terrell, C.J., and Dhavle, J., who referred it to a larger Bench.

On this Reference.

B. C. De (with him *L. K. Chadhuri*), for the appellant :—There is no estoppel against statute—Broom's Legal Maxim, page 313. I am entitled to prove by evidence that I have evaded the statute. The question of estoppel does not arise. [Relies on *Uchit Lal Missir* v. *Raghunandan Tewari*(1), *In re A Bankruptcy Notice*(2) and *Chandra Kanta Nath* v. *Amjad Ali Haji*(3).]

[FAZL ALI, J.—The case of *Uchit Lal Missir*(1) deals with a case of estoppel by judgment which is different from personal estoppel within section 115 of the Evidence Act.]

Section 115 does not apply as the other side was not induced by my representation to change his position—Woodroffe, page 850 (Introductory notes).

If the tenancy is void, the tenant begins to hold as a tenant-at-will. In spite of his assertion that he was holding a higher right, he cannot prescribe against his landlord. He must first surrender his tenancy and then attempt to prescribe.

(1) (1934) I. L. R. 14 Pat. 52, F. B.
(2) (1924) 2 Ch. 76.
(3) (1920) I. L. R. 48 Cal. 783, F. B.

[FAZL ALI, J.—How do you distinguish the case of an ordinary trespasser acquiring a right by adverse possession from that of a tenant who according to you had no valid title from the very inception of the tenancy which was void?]

The first class of persons acquires title under the general law, whereas the Chota Nagpur Tenancy Act does not contemplate acquisition of interest by adverse possession. Where the lessee enters into possession under a void lease he becomes a tenant-at-will, but as soon as he pays rent he becomes a tenant from year to year, liable to be ejected after notice to quit.

[CHIEF JUSTICE.—Can the relationship of landlord and tenant under the Chota Nagpur Tenancy Act be created by any process outside the provisions of the Act?]

Yes; Woodfall, page 158 (23rd Edition).

[FAZL ALI, J.—You cannot have both ways. You say the deed is void and at the same time assert that the tenant acquired some title at the inception.]

The deed of settlement is void, but entry and payment of rent constitute him a tenant from year to year.

[CHIEF JUSTICE.—If the defendant was a tenant-at-will at the inception no amount of assertion on his part that he was a permanent tenant or his possession for more than twelve years after that assertion will defeat the landlord.]

Exactly.

[MACPHERSON, J.—In the Ramgarh case where the tenant offered rent on the condition that he was a permanent tenant and the landlord refused to accept the rent and waited for more than twelve years and did not take steps to eject him, it was held that his right to eject was barred.]

The case is distinguishable. After the death of the life-tenant there was no more relationship of landlord and tenant and the defendant's possession, therefore, became adverse.

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If a person enters under a void lease, he cannot prescribe: *Lim Charlie* v. *The Official Receiver*(1). Adverse possession cannot be invoked to create a title which is prohibited by statute: *Madhavrao Waman Saundalgekar* v. *Raghunath Venkatesh Deshpande*(2). [Also relies on *Thakur Khitnarain Sahi* v. *Surju Seth*(3).]

Janak Kishore (with him *Bindeshwari Prasad*), for the respondent, cited *Attorney-General* v. *Davey*(4). *Shama Charan Nandi* v. *Abhiram Goswami*(5) and *Iswar Chandra Nath* v. *Gour Sundar Nath*(6).

[Their Lordships did not desire to hear him further.]

S. A. K.

Cur. adv. vult.

COURTNEY TERRELL, C.J., MACPHERSON AND FAZL ALI, JJ.—This is a Letters Patent appeal from a judgment of Noor, J., in a suit to eject the defendant from a piece of land in Chota Nagpur on the allegation that he the defendant was an under-raiyat of the plaintiffs who were raiyats and that he did not vacate the land after the service of notice to quit.

The defence was that the plaintiffs representing themselves as tenure-holders had inducted the defendant on the land and had made a raiyati settlement thereof.

The finding of the trial court and the lower appellate court was that the plaintiffs had in fact made the representation alleged. The defendant pleaded that the plaintiffs were estopped from representation that they were tenure-holders and were estopped from denying that he was a raiyat. A plea

(1) (1933) I. L. L. 12 Rang. 238, P. C.
(2) (1923) I. L. R. 47 Bom. 798, P. C.
(3) (1931) I. L. R. 10 Pat. 582, 588.
(4) (1859) 45 E. R. 53, 55.
(5) (1906) I. L. R. 33 Cal. 511.
(6) (1923) 39 Cal. L. J. 337.

of limitation was also raised on the basis that the defendant, whatever his position may have been at the inception of the tenancy, had acquired occupancy rights by adverse possession against the plaintiffs.

In the record-of-rights of 1910, the plaintiffs were undoubtedly recorded as raiyats. The settlement of the land with the defendant took place in 1908 or 1909 and the defendant was entered in the record-of-rights as a dar-raiyat. The defendant, however, paid rent as a raiyat and got receipts from the plaintiffs describing him as a raiyat. It is not denied that under the Chota Nagpur Tenancy Act a raiyat cannot grant any permanent rights.

The plaintiffs contend that the lease is void and the learned Judge of this Court has held that there cannot be any estoppel against the statute. There is an aspect of the matter, however, which does not seem to have been brought to the learned Judge's notice. Had the terms of the lease described the plaintiffs correctly as raiyats, the defendant could not have set up a plea that the plaintiffs were precluded from denying their title to confer a permanent right upon the defendant. This would have been a genuine case of an application of the principle that there cannot be an estoppel against a statute. In this case, however, the defendant denies that the plaintiffs are raiyats and alleges that they are as represented by them, tenure-holders. This raises an issue of fact and it is not until that issue of fact is concluded in favour of the plaintiffs that any question of the operation of the statute can arise. It is true that the record-of-rights describes the plaintiffs as raiyats but this is a piece of evidence only to which is attached the statutory presumption of correctness which is subject to rebuttal. The first issue, therefore, is as to whether the plaintiffs are or are not tenure-holders and it is at this stage that the doctrine of estoppel operates. The plaintiffs having represented themselves as tenure-holders cannot be permitted to enter

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into a discussion of this question of fact but must be held bound by their own representation. No question, therefore, of the operation of the statute can arise. The plaintiffs are prevented from proving the fact which is indispensable before the matter of the statute can be considered.

COURTNEY TERRELL, C. J., MACPHERSON AND FAZL ALI, JJ.

It is hardly necessary to add that there would have been no estoppel, if there had been any collusion between the plaintiffs and the defendant, and if it had been established that the former had deliberately misrepresented themselves to be tenure-holders to the knowledge of the latter to defeat the provisions of the Chota Nagpur Tenancy Act.

The appeal should be dismissed and the plaintiff's suit for possession dismissed with costs throughout.

Appeal dismissed.

SPECIAL BENCH.

1936.

March. 23.

Before Courtney Terrell, C.J., Macpherson and Fazl Ali, JJ.

DUKHA LAL CHOUDHURI

v.

MUSAMMAT MANABATI.*

Bengal Tenancy Act, 1885 (*Act VIII of* 1885), *sections* 38 *and* 52—*reduction of rent—istamrari mukarrari tenure-holder, whether entitled to abatement of rent—land wholly unfit for cultivation.*

A tenant who holds under an istamrari mukarrari lease is not entitled to claim reduction of rent under section 38 of the Bengal Tenancy Act, 1885, on the ground that his land has permanently deteriorated or has become useless for cultivation.

Where the rights and liabilities of the parties are regulated by contract the terms of which could not be said to have been unfair at the date when the contract was entered

* Letters Patent Appeal no. 14 of 1935, from a decision of the Hon'ble Mr. Justice James, dated the 26th February, 1935, in Second Appeal no. 1236 of 1933.