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it under cultivation, he is to be deemed to have acquired a right to hold it for the purpose of cultivation, notwithstanding that he may not actually cultivate it. The suit cannot be treated as barred by limitation, and the defendants can claim no right against the plaintiffs by virtue of the provisions of section 64 of the Chota Nagpur Tenancy Act, because the plaintiffs have the status of occupancy raiyats on the land in dispute.

I would, therefore, maintain the order of the Judge of this Court and dismiss this appeal with costs.

COURTNEY TERRELL, C. J.—I entirely agree.

J. K.

Appeal dismissed.

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January, 21.

LETTERS PATENT.

Before Courtney Terrell, C.J. and James, J.

UMASHANKAR PRASAD

v.

KUNJ BIHARI THAKUR.*

Bihar Tenancy Act, 1885 (*Act VIII of* 1885), *section* 116 *zirat land—oral lease for one year, whether affected by section* 116 *of the Act—tenant taking oral lease of zirat land for one year, whether can acquire occupancy right.*

A tenant taking an oral lease of zirat land for a definite period of one year cannot acquire occupancy right in view of the provisions of section 116 of the Bihar Tenancy Act.

The word " a term of years " in section 116 of the Act is a generic term. It does not refer to the actual expression of the period in the lease itself. It means merely a period of time which can be measured in years. The true meaning of

*Letters Patent Appeal no. 26 of 1937, from a decision of the Hon'ble Mr. Justice Rowland, dated the 2nd September, 1937.

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the expression is that it must be a lease for a definite period, to come to an end at a definite date and nothing more.

A lease for a year certain is not the same as a lease from "year to year"; when the former expression is used whether the landlord takes any steps or not the tenant becomes a trespasser when his lease comes to an end, whereas when the latter expression is used, the tenant has the right to stay for a year certain, and if he does not receive notice from the landlord to quit his tenancy at the end of the year certain, then his tenancy shall extend for another period of one year.

Bishop of Bath's case (1), explained.

Appeal by the plaintiff.

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

S. M. Mullick and *A. K. Mitter*, for the appellant.

B. C. De, for the respondents.

COURTNEY TERRELL, C.J.—This is a Letters Patent appeal from the decision of Rowland, J. sitting singly and setting aside the judgment of the District Judge and restoring the decision of the Munsif by which the plaintiff's claim was dismissed. The facts are that the plaintiff owned certain zirat land. By an oral lease he let it out to the defendant for a definite period of one year (Fasli year 1339) ending on the 14th September, 1932. As the defendant did not deliver up possession on the 14th of September, 1932, when he became a trespasser, his right to occupy the land having ceased, the landlord in August, 1933, sued to eject him. Certain defences were set up by the defendant which on the findings of fact of the lower appellate Court have been found to be baseless and have not been supported either before the learned Judge sitting singly or before us. But one point was taken before the learned Judge which he accepted. The defendant said that he had acquired occupancy rights and that his case being governed by a lease for one year only was not affected by section 116 of the

(1) 6 Co. Rep. 34(b); 77 Eng. Rep. 303.

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Bihar Tenancy Act. He relied upon the wording of the last paragraph of the section:

> " A proprietor's private lands known in Bengal as khamar, nij, or nijjot, and in Bihar as ziraat, nij, sir or khamat, where any such land is held under a lease for a term of years or under a lease from year to year."

It was contended with success before the learned Judge that a lease for a definite period of one year is not on the one hand a lease from year to year, nor is it, it is said, a lease which comes under the term " a lease for a term of years ". The learned Judge is of opinion that the term of years must be a term of at least two years; and I think he was completely misled by the citation of an old report of the *Bishop of Bath's* case(1). The learned Judges in that case were discussing the various expressions used in a lease and the portion of the Coke's Report relied upon runs thus: " It was resolved, if a man makes a lease from the Feast of St. Michael, for as many years as I. S. shall name, in this case if I. S. name a certain term (in the life of the lessor) it is a good lease by matter ex post facto. So it is of all leases which are to commence on a condition precedent. And as to *Potkin's* case(2) which was cited by the counsel on both sides in this case, where the case was, that Potkin, 10 H.7. demised a wood to the defendant to commence at the Feast of St. Michael next following, *pro term, unius anni and sic de uno anno in annum, quamdiu ambabus partibus placuerit*, and there two justices against two. It is now resolved, *per totam Curiam*, that in such case after three years *ad maximum*, it was but a lease at will, because beyond that, the term has not any certain continuance or determination; and on the matter is no other, than if one demises lands for such term as both parties shall please, this is but a lease at will, because the term is altogether uncertain. But if a man leases his land for years, it is a good lease for two years, because it shall be taken good for

(1) 6 Co. Rep. 34(*b*); 77 Eng. Rep. 803.
(2) 1 Rolle. 851.

such a number with which at least the plural number will be satisfied, and that is with two years".

Now the meaning of this passage is simply that if a man uses the expression "I lease my land to you for years" or "I lease my land to you for a term of years", either of those expressions being the expressions used by the lessor in the lease, the word 'years' being in the plural, the plural must be given effect to and the plural cannot be given effect to unless the lease is understood as being for a period at least of two years' duration. But in the case before us no such expression is used in the lease at all. The lease was for one year certain. Now in the Act which we are considering and in the portion which I have quoted above, the words "a term of years" is a generic term. It does not refer to the actual expression of the period in the lease itself. That is manifest, for if the expression used in the lease itself were "I let the land to you for a term of years" although the tenant might be entitled, as was said in the English Report which I have quoted, to retain the land for two years at least, it cannot be said with certainty that he was entitled to retain the land for five years, or six years or nine years. The Act is not referring to the precise expression used in the lease but to a class of leases. Now it means merely a period of time which can be measured in years. One year is a measure of years. Six months is a measure of half of a year, i.e., it is a measure which can be reckoned in years. In other words, the true meaning of the expression is that it must be a lease for a definite period, to come to an end at a definite date and nothing more; and if the meaning were as imagined by the learned Judge to be the correct meaning, it would mean that a person who had got a lease for one year certain, would be in a better position with regard to the possible acquisition of occupancy right than a man who had a definite lease for two years. For the latter, under the construction of the Act, would most

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certainly be prevented from obtaining occupancy rights, whereas the former being outside the definition would be able to obtain occupancy rights. The misunderstanding by the learned Judge of the use of the words "a term of years" misled him throughout his decision. Similarly a lease for a year certain is not the same as a lease from year to year; where the former expression is used whether the landlord takes any steps or not the tenant becomes a trespasser when his lease comes to an end, whereas when the latter expression is used, the tenant has the right to stay for a year certain and if he shall not receive notice from the landlord to quit his tenancy at the end of the year certain, then his tenancy shall extend for another period of one year. The expression "from year to year", therefore, also does not cover the lease for one year certain, because the rights of the tenant in the latter case are better than the rights of the tenant in the former case. It was contended by Mr. De supporting the conclusion of Rowland, J. that the true meaning of the legislaiton was that in order to prevent the tenant from acquiring occupancy rights there should be a registered lease; and by way of furthering that argument he made reference to the later Statute, the Chota Nagpur Tenancy Act, section 43, where it certainly is provided that if a lease is to cut the tenant off from obtaining occupancy rights, it must be a registered lease. There in the Chota Nagpur Tenancy Act the words expressly are 'registered lease' and furthermore the expression marking the period, instead of being, as in section 116 of the Bihar Tenancy Act, "a term of years" is thus expressed "a term exceeding one year or on a lease, written or oral, for a period of one year or less". It will be noticed that the demand for registration, the expression "a period of one year or less" and the further expression "written or oral" are all different and are in contrast with the expressions used in the Bihar Tenancy Act. It is not necessary for an oral lease to be registered, nor indeed do I see any manner

in which an oral lease can be registered. The demand for registration applies purely to a written lease. The learned Judge who heard this case was I think misled by the case of *Bishop of Bath*(1) but if it is carefully read, it will be seen that the words " term of years " are used there in the sense of the actual expression used in the lease, whereas in section 116 the words " a term of years " are merely a classificatory term and mean nothing more than any definite term and any definite term of time may be measured in years though not necessarily an even number of years.

For these reasons in my opinion the judgment of Rowland, J. must be reversed and the judgment of the District Judge must be restored. The respondents must pay the costs of this appeal throughout.

JAMES, J.—I agree.

J. K.

Appeal allowed.

APPELLATE CIVIL.

1937.

October, 20, 21, 22.

Before Wort and Varma, JJ.

SHAIKH MOHAMMAD ANAS

v.

BHUPENDRA PRASAD SHUKUL.*

Limitation Act, 1908 (*Act IX of* 1908), *Article* 182—*application for execution by the real assignee of a decree whether is an application in accordance with law—Code of Civil Procedure,* 1908 (*Act V of* 1908), *Order XXI, rules* 15 *and* 16—*transferee of decree, meaning of—application under rule* 15, *requisites of.*

A obtained a decree for possession and mesne profits in 1920 and thereafter he assigned 7-annas interest in the same in favour of *N*, who took the assignment in the name of *M*. The amount of mesne profits was ascertained and a final decree

(1) 6 Co. Rep. 34(*b*); 77 Eng. Rep. 303.

*Appeal from Original Order no. 42 of 1936, from an order of Babu Dwarika Prasad, Subordinate Judge of Muzaffarpur, dated the 13th of January, 1936.