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were prior in time, and all the assets of the insolvent are vested in the official assignee there, this Court ought to yield to the prior claim of the Court at Madras. The best course, we think, under the circumstances will be to stay the proceedings here till further orders of the Insolvent Court, leaving the Bombay creditors to take such steps in Madras as they may be advised to take. This may appear to be hard upon them, but it would be equally hard on the Madras creditors to be compelled to take steps in Bombay, and the Bellary creditors for this purpose must be ranked with the Madras creditors, Madras being their natural Court to resort to, as there is no Insolvency Court at Bellary. Each party to bear his own costs.

Attorneys for the insolvent (appellant) :—Messrs. *Craigie, Lynch and Owen.*

Attorneys for the petitioning creditor (respondent) :—Messrs. *Hirálál, Mulla and Mulla.*

APPELLATE CIVIL.

Before Chief Justice Farran and Mr. Justice Strachey.

TIMMA'PPA KUPPA'YA (ORIGINAL PLAINTIFF), APPELLANT, *v.* RA'MA VENKA'NNA NA'IK (ORIGINAL DEFENDANT), RESPONDENT.*

1895. *December* 3.

Landlord and tenant—Lease—Sub-lease—Ejectment of tenant—Position of sub-tenant—No privity of contract between landlord and sub-tenant—Notice to quit—Land Revenue Code (Bom. Act V of 1879), *Sec.* 84.†

A sub-lease differs from an assignment of lease, in that it creates no privity of contract between the sub tenant and the landlord. The landlord has to deal with his lessee and not with the sub-tenants of the latter.

A landlord putting an end, by proper notice, to the tenancy of his tenant thereby determines the estate of the under-tenants of the latter.

* Second Appeal, No. 548 of 1894.

† Section 84 of the Land Revenue Code (Bombay Act V of 1879) :—

84. An annual tenancy shall, in the absence of proof to the contrary, be presumed to run from the end of one cultivating season to the end of the next. The cultivating season may be presumed to end on the 31st March.

An annual tenancy shall require for its termination a notice given in writing by the landlord to the tenant, or by the tenant to the landlord at least three months before the end of the year of tenancy at the end of which it is intimated that the tenancy is to cease. Such notice may be in the form of Schedule E, or to the like effect.

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TIMMÁPPA v. RÁMA VENKA'NNA.

SECOND appeal from the decision of E. H. Moscardi, Acting District Judge of Kánara, reversing the decree of Ráo Sáheb Phadnis, Subordinate Judge of Kumta.

The plaintiff had brought a suit (No. 205 of 1888) against Venkatesh Achutaya and others for possession of certain lands. The defendants in that suit alleged that they were mulgeni tenants, but the allegation was held not proved, and a decree was passed for the plaintiff. In execution the plaintiff was obstructed by Ráma Venkánna, present defendant, who alleged that he was a mulgeni tenant under Venkatesh and the other defendants. The plaintiff thereupon applied under section 331 of the Civil Procedure Code (Act XIV of 1882) for the removal of the defendant's obstruction. The application was numbered and registered as a suit.

The defendant now pleaded that the land in suit was the mulgeni holding of Venkatesh and the other defendants in Suit No. 205 of 1888; that the father of those defendants had let it out to him on mulgeni tenure thirty-five years before suit; that he had been in possession ever since; that the plaintiff had no power to oust him before the tenancy was determined, and that he not having been a party to the former suit (No. 205 of 1888) was not bound by the decree.

The Subordinate Judge found that the defendant was not a mulgeni tenant and passed a decree directing that his obstruction be removed and possession be given to the plaintiff.

On appeal by the defendant the Judge reversed the order of the Subordinate Judge on the ground that the plaintiff could not sue to eject the defendant, because he admitted that the defendant was a tenant of the defendants in the former suit (No. 205 of 1888). He held that the present suit must fail for want of previous notice to the defendant to vacate under section 84 of the Land Revenue Code (Bombay Act V of 1879).

Nárayan G. Chandávarkar, for the appellant (plaintiff):—No notice was necessary to put an end to the defendant's tenancy. There is no privity of contract between the plaintiff and the present defendant, who is only a sub-lessee—Platt on Leases, pp. 102,

104; Woodfall on Landlord and Tenants, p. 359; *Roe* v. *Wiggs*(1); *Mellor* v. *Watkins*(2); *Bhutia Dhondu* v. *Ambo*(3); *Bejoy Gobind Singh* v. *Sunkur Dutt Singh*(4); *Pleasant* v. *Benson*(5). The point of notice was, moreover, raised for the first time in the Court of appeal; it was not taken in the first Court.

Dattatraya A. Idgunji appeared for the respondent (defendant) :—Where a lessee surrenders his estate, an under-lessee is not prejudiced by the surrender—*Great Western Railway Company* v. *Smith*(6). The defendants in Suit No. 205 of 1888, our lessors, failed by their negligence to prove their mulgeni tenancy. This failure amounts to a surrender on their part and does not terminate our tenancy. The Transfer of Property Act (IV of 1882) has adopted the provisions of English law on this point, but those provisions are not applicable to agricultural lands: *vide* sections 115 and 117 of the Act. Express notice to quit is, therefore, necessary to terminate our tenancy. The question of notice was raised in our written statement.

FARRAN, C. J.:—A sub-lease differs from the assignment of a lease in that it creates no privity of contract between the sub-tenant and the landlord. The landlord has to deal with his lessee and not with the sub-tenants of the latter.

The English authorities show conclusively that a landlord putting an end by a proper notice to the tenancy of his tenant thereby determines the estate of the under-tenants of the latter. This is undoubted law—*Roe* v. *Wiggs*(1); *Mellor* v. *Watkins*(2); Woodfall on Landlord and Tenants, p. 359.

The question is whether a different rule should be applied in this Presidency by reason of the provisions of section 84 of the Land Revenue Code of 1879 or for any other cause. We think not. The provisions of the section in question in directing that a landlord must give the notice therein required to his tenant, and making no reference to the sub-tenants of the latter, rather imply the contrary, and convenience points in the same direction. The landlord in many cases knows nothing about the

(1) 2 Bos. and P., (N. R.) 330.
(2) L. R., 9 Q. B., 100.
(3) I. L. R., 13 Bom., 294.
(4) 10 Cal. W. R., 367.
(5) 14 East's Reports, 234.
(6) 2 Ch. D., 235.

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sub-tenants of his lessee, and when he has given due notice to and terminated the tenancy of the latter, and it may be, as here, has resorted to legal measures to evict him, it would be a hardship on him to find that he had to begin proceedings all over again against the sub-tenants. An assignee of a lease is of course in a different position, for he is brought by his assignment into direct relations with the landlord.

The surrender of a lease by the lessee also gives rise to wholly different considerations—*Great Western Railway Company* v. *Smith*[1].

We must, therefore, hold on the facts as found by the District Judge that notice by the plaintiff to the defendant in this case was not necessary, and reversing his decree restore that of the Subordinate Judge, with costs throughout on the defendant.

Decree reversed.

(1) 2 Ch. D., 235.

APPELLATE CIVIL.

Before Chief Justice Farran and Mr. Justice Strachey.

1895. *December* 9.

RA'MA'CHA'RYA AND OTHERS (PLAINTIFFS), APPELLANTS, *v.* ANANTA'CHA'RYA AND OTHERS (DEFENDANTS), RESPONDENTS.*

Execution of decree—Decree—Death of a party to a suit after argument and before delivery of judgment—Execution against the heirs of deceased judgment-debtor—Civil Procedure Code (Act XIV of 1882), *Secs.* 234, 248-250—*Practice—Procedure.*

On the 30th November, 1892, an appeal in the High Court was argued and the case adjourned for judgment.

On the 12th June, 1893, one of the defendants-respondents died.

On the 6th July, 1893, the High Court pronounced its judgment, and a decree was drawn up as if the deceased respondent was still living.

On the 15th December, 1893, the decree-holder applied for execution of the decree, but the application was rejected by the Court of first instance on the ground that as the heirs of the deceased defendant had not been placed on the record before the judgment of the High Court was delivered, the decree was incapable of execution.

Held, reversing the lower Court's decision, that the decree was, on its face, a good decree, and it could be executed against the heirs of the deceased defendant under sections 234 and 248-250 of Civil Procedure Code (Act XIV of 1882) without placing them on the record.

*Appeal, No. 99 of 1895.