

That section obviously refers, in the first place, to the judgments passed in civil suits in the exercise of the original civil jurisdiction of the Court. It also refers to the orders passed by a single Judge disposing of the original and appellate work of this Court under rules made under section 13 of the Act relating to this Court.

The order passed in this application falls under neither category. It is not a judgment, and it does not come within the scope of the work disposed of by a single Judge in accordance with rules framed under section 13. It is, moreover, as observed above, a discretionary jurisdiction, and, therefore, no appeal lies from such an order under paragraph 15 of the Letters Patent. There has been no precedent before where any such appeal was allowed, and we must, therefore, dismiss this appeal.

Appeal dismissed.

APPELLATE CIVIL.

Before Sir C. F. Farran, Kt., Chief Justice, and Mr. Justice Candy.

KANTHEPPA RADDI (ORIGINAL PLAINTIFF), APPELLANT, *v.* SHESHAPPA
AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

1897.

September 13.

Limitation Act (XV of 1877), Sch. II, Art. 139—Landlord and tenant—Lease—Tenant overholding on expiration of lease—Nature of holding—Tenant by sufferance—Adverse possession—Limitation.

Seemle—Under article 139, Schedule II, of the Limitation Act (XV of 1877) time begins to run against a landlord when the period of a fixed lease expires, when there is no evidence from which a fresh tenancy can be inferred, and not at some indeterminate date after that period.

Where a tenant holds over after the expiration of his lease without further agreement, such holding over, though by English law styled a tenancy by sufferance, is wrongful. Slight evidence, however, will suffice to change his position into that of a tenant at-will.

SECOND appeal from L. Crump, Assistant Judge of Dhárwár.

Suit for possession. This suit was filed in 1893. The defendants pleaded (*inter alia*) that the plaintiff's claim [was barred by limitation.

* Second Appeal, No. 150 of 1897.

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The house in question had originally belonged to the defendants' father Gurlingapa. In 1871 he sold it to one Shivamurtaya, but retained possession as Shivamurtaya's tenant. On 16th February, 1873, he passed a rent-note to Shivamurtaya under which he was to hold the property for a year as tenant to Shivamurtaya and then give up possession.

The material part of the rent-note was as follows:—"The house within these boundaries is let to me by you for (my) residence. I have made an agreement of rent Rs. 6 per year. I will remain for one year, pay the rent of Rs. 6, and at the end of one year from this date make over your house to you. To this effect I have duly given this rent-note to you."

It did not appear that Gurlingapa had vacated the house at the end of the year, in accordance with the rent-note. The only fact proved at the hearing with reference to possession was that the defendants (his sons) had been in physical possession of the house for fifteen years prior to suit.

Shivamurtaya, however, in 1890 sold the house to the plaintiff and in 1893, as above stated, the plaintiff brought this suit for possession.

The lower Court held that the possession by the defendants and their father Gurlingapa had been adverse to the plaintiff and his vendor and that the suit was barred by limitation. In his judgment the Judge said:—

"The evidence for the defendants clearly shows that the defendants have been in physical possession of these two houses for some fifteen years.

* * * * *

"As soon as the year's tenancy elapsed, the possession of the defendants' father was *ipso facto* inconsistent with the subsistence of his landlord's title, as he had agreed to vacate at the end of the year; nor is it shown that his tenancy was renewed. This is not a case of mere non-payment of rent, as would have been the case had the lease been continued until within twelve years of the filing of the suit. * * * As soon as the year for which the lease was to run terminated, the possession of the defendants' father ceased to be consistent with the ownership of the plaintiff's vendor."

The plaintiff appealed. The question was whether on the expiration of the year 1873, for which the above rent-note was given, the possession became adverse under article 139 of the

Limitation Act (XV of 1877), or, as stated in the judgment, whether a tenancy is determined upon the expiration of a lease for a defined period.

Sitanath G. Ajinkya for the appellant (plaintiff).

* *Narayan V. Gokhale* for the respondents (defendants).

The following authorities were referred to:—*Gangabai v. Kalapa*⁽¹⁾; *Rango Lall v. Abdool Guffoor*⁽²⁾; *Adimulam v. Pir Ravuthan*⁽³⁾; *Sayaji v. Umaji*⁽⁴⁾; *Alima v. Kulti*⁽⁵⁾; *Faki Abdulla v. Babaji*⁽⁶⁾; *Dharm Singh v. Hur Pershad*⁽⁷⁾; Woodfall on Landlord and Tenant, p. 715.

FARRAN, C. J.:—This appeal raises a question which, having regard to the state of the authorities, is one of difficulty.

On the 26th August, 1871, the father of the defendants by Exhibit 48 sold the two houses in suit and some lands to one Shivamurtaya. On the 13th September, 1878, Shivamurtaya mortgaged, and subsequently on the 28th August, 1890, sold the whole property to the plaintiff.

The plaintiff filed the present suit in 1893 to eject the defendants from the two houses. As to one house, both the lower Courts rejected the plaintiff's claim as being time-barred, and no question now remains as to that house. As to it we dealt with the arguments of the learned pleader for the appellant without calling upon the other side. As regards, however, the tiled house, it is contended that the plaintiff's claim is not time-barred, in as much as the defendants' father Gurulingapa in 1870 and 1873 passed rent-notes to Shivamurtaya in respect of it. The former document, which was in the same terms as Exhibit 50, we need not further allude to, as it necessarily ceased to have any operation when the later rent-note (Exhibit 50) was executed. This latter bears date the 16th of February, 1873, and omitting recitals, runs thus:—“ My private tiled house is situate in the village of Kállapur; the boundaries thereof are * * * The house within these boundaries is let to me by you for

(1) I. L. R., 9 Bom., 419.

(4) 3 Bom. H. C. Rep., 27 (A. C. J.)

(2) I. L. R., 4 Cal., 311.

(5) I. L. R., 14 Mad., 96.

(3) I. L. R., 8 Mad., 421.

(6) I. L. R., 14 Bom., 453.

(7) I. L. R., 12 Cal., 38.

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(my) residence. I have made an agreement of rent of Rs. 6 per year. I will remain for ~~one~~ year, pay the rent of Rs. 6, and at the end of one year from this date make over your house to you. To this effect I have duly given this rent-note to you."

The plaintiff put in evidence a further alleged rent-note said to have been passed to him by the defendants after the plaintiff's purchase in respect of this tiled house as well as of the other house. Both the lower Courts have regarded it as unproved. The learned pleader for the appellant has contended that we ought to reject that finding and hold that the document is established, because the Judges in the lower Courts have not specifically noted that the stamp upon it purports to have been issued to the plaintiff and the defendants. We are not at liberty thus to set aside a finding of fact, or to assume that the lower Courts did not consider this circumstance. If the plaintiff intended, when he purchased the houses, to prepare and put forward a false rent-note as having been passed to him by the defendants, he would doubtless represent to the stamp officer that the defendants joined him in purchasing the stamp. The argument, if we were at liberty to consider it, is of little value.

Except that the evidence shows that the defendants have been in physical occupation of the two houses for some fifteen years, and that the above rent-notes were passed by the defendants' father to Shivamurtayya there appears to have been no further fact as to the possession of the house proved in the case. The Subordinate Judge held the suit in respect of the tiled house to be in time. The Assistant Judge held the possession of it by the defendants' father and the defendants to have been adverse, and dismissed the suit. "As soon as the year for which the lease was to run terminated, the possession of the defendants' father ceased" (he says) "to be consistent with the ownership of the plaintiff's vendor." We have to consider whether that view is correct.

Article 139 of the Limitation Act prescribes the period of twelve years "by a landlord to recover possession from a tenant" from the time "when the tenancy is determined." The question is whether the tenancy is determined upon the expiration of a lease for a defined period. The Madras High Court in *Adimu-*

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lam v. Pir Ravulhan⁽¹⁾ has held that a lessee holding over after the expiration of his lease is a tenant on sufferance and that such tenancy continues until it is determined by some act upon either side, and that it lies upon the person resisting the landlord's claim for possession on the ground of limitation to show that the tenancy is determined. The cases of *Dadoba v. Krishna*⁽²⁾ and *Tatia v. Sadashiv*⁽³⁾ do not shed any light upon this question, as in the former case the defendant held possession under an indeterminate agreement and the latter was the case of a yearly tenant. The case of *Ramchandra v. Sadashiv*⁽⁴⁾ was that of one mortgagor redeeming for the common benefit, it is presumed, of himself and his co-mortgagors. That also does not assist us. *Gangabai v. Kalapa*⁽⁵⁾ was again the case of a yearly lease. There appears to be no Bombay decision upon the construction of article 139 as applied to a lease for a fixed period. All that the Bombay cases decide is that non-payment of rent by a tenant does not of itself extinguish the relation between him and his landlord. In *Rungo Lall v. Abdool Guffoor*⁽⁶⁾ the tenancy was an annual one and the law as to non-payment of rent was laid down in it in the same terms as in the Bombay rulings. The passage at p. 417 of the judgment in *Modho v. Tekait Ram Chunder*⁽⁷⁾—beginning "We think it is clear"—is rather opposed to the Madras decision we have referred to, as it treats for the purpose of article 139 the expiration of a lease for a fixed time and the termination of tenancy as synonymous.

We are inclined to think that the termination of the period of a fixed lease, *where nothing further occurs*, is the time from which limitation begins to run against the landlord within the meaning of article 139 of the Limitation Act. The law laid down in section 111 of the Transfer of Property Act is this: "A lease of immoveable property determines by efflux of the time limited thereby." To constitute the creation of a fresh relation of landlord and tenant between the parties, section 116 assumes that there must be an assent by the landlord to the tenants continuing in possession evidenced by his acceptance of rent or in some

(1) I. L. R., 8 Mad., 425.

(4) I. L. R., 11 Bom., 422.

(2) I. L. R., 7 Bom., 34.

(5) I. L. R., 9 Bom., 419.

(3) I. L. R., 7 Bom., 40.

(6) I. L. R., 4 Cal., 314.

(7) I. L. R., 9 Cal., 411.

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other way. It must be borne in mind that under English law the possession of a tenant holding over after the expiration of a lease for a fixed period without the assent of his landlord, though such holding over was styled a "tenancy by sufferance" was wrongful. "A tenant by sufferance is he who enters by lawful demise or title and afterwards wrongfully continues in possession * * so any one who continues in possession after a particular estate is ended without agreement." Com. Dig. Tit Estates—Tenant by sufferance. Similarly on the determination of a tenancy by will a tenancy by sufferance arises—*Barry v. Goodman*⁽¹⁾. The difference between a tenant at will and a tenant on sufferance is this: the former is always in by right, but the latter holds over by wrong—Woodfall's Landlord and Tenant, p. 242, Ed. 1889. A tenant by sufferance is liable to be sued in ejectment without notice or demand—*Barry v. Goodman (supra)*. There is no substantial difference between his position and that of a trespasser as he is sometimes so styled: see *Roe v. Ward*⁽²⁾. Slight evidence will, as the above case of *Barry v. Goodman* shows, suffice to change the position of a tenant by sufferance into that of a tenant at will, as receipt of rent will change it into an annual tenancy; but in the absence of such evidence the original tenancy having determined, the tenant holding over occupies the position of a trespasser. Hence we think that under article 139 of the Limitation Act time begins to run against a landlord when the period of a fixed lease expires, when there is no evidence from which a fresh tenancy can be inferred, and not at some indeterminate date after that period. This is the view taken by Mr. Staring in his useful edition of the Limitation Act. See page 281, edition of 1895. It is not necessary for us, however, actually to decide the point in this appeal, as the highest at which the appellant's case was rested was that the defendants' father became a tenant by sufferance after the expiration of the lease of 1873. This relation between the parties, even according to the Madras decision, ceased upon his death, and the defendants since then have been holding adversely to the plaintiff. We confirm the decree with costs.

Decree confirmed.

(1) 2 M. and W., 768.

(2) 1 H. Bl., 96.