

ORIGINAL CIVIL.

*Before Mr. Justice Fullon.*1899.
March 7.MERWANJI MANCHERJI CAMA AND ANOTHER (PLAINTIFFS) v. SYED
SIRDAR ALI KHAN, DEFENDANT.**Landlord and tenant—Lease—Covenant for quiet enjoyment—Covenant implied—Interruption of tenant's enjoyment by order of plague officials—Suit for rent.*

A lessor sued to recover from his lessee rent for fifteen months from 1st August, 1897, to 31st October, 1898, under an agreement for lease for ten years dated 1st September, 1890, *i. e.* prior to the application of the Transfer of Property Act (IV of 1882) to Bombay. The defendant contended that in the agreement there was an implied covenant for quiet enjoyment, and that as he had been compelled by the plague authorities to vacate the premises from 5th February, 1898, to 1st April, 1898, there had been a breach of the covenant. He claimed, therefore, to deduct the rent for that period or to be allowed it as a counter-claim as damages for disturbance.

Held (giving judgment for plaintiff) that even assuming that, in the agreement for the lease, a covenant for quiet enjoyment was to be implied, such a covenant could only be one for the quiet enjoyment by the defendant so long as it was lawful for him to enjoy the property. No guarantee against the acts of Legislature could be read into the implied covenant for quiet enjoyment.

Suit to recover rent. The plaintiff claimed Rs. 3,225 as rent due to him for certain stables under an agreement for a lease dated 1st September, 1890.

The said agreement was executed to the defendant's father, who died in May, 1896. It was an agreement for a term of ten years from the 1st October, 1890, and the monthly rent was Rs. 215; the lessee also to pay Rs. 6 per month municipal taxes.

The defendant was the executor of the lessee (his father), and he had paid the rent subsequently to his father's death down to 31st July, 1897.

The plaintiff now claimed the sum of Rs. 3,225, rent due for fifteen months from 1st August, 1897, to 31st October, 1898.

The defendant pleaded that there was an implied covenant for quiet enjoyment, and that notwithstanding that covenant his (the defendant's) enjoyment of the property had been interrupted from

* Suit, No. 685 of 1898.

the 5th February, 1898, to the 1st April, 1898, during which period he had been obliged to vacate the premises under orders received from the district plague officer. On the 31st August, 1898, he was again obliged to vacate under orders from the same authority, and he had been prohibited from allowing the premises to be used as the residence of his horse-keepers.

He contended that by reason of such interruption of enjoyment, from 5th February, 1898, to 1st April, 1898, he was not liable for the rent for that period. He further contended that since the plague authorities had now prohibited the use of the premises as a habitation for his grooms it had become unlawful for the plaintiff to maintain the defendant in the enjoyment of them in the manner intended at the date of the lease, and that, therefore, the whole lease was void, and that he was not liable for any rent after the 31st August, 1898.

He further counter-claimed for the sum of Rs. 383-14-10 as damages for disturbance from 6th February to 31st March, at the rate of Rs. 215 a month, and further damages at the same rate from 31st August, 1898, until judgment. He also counter-claimed for the sum expended by him in renting land and erecting other stables thereon for use during the period of interruption.

He brought into Court the sum of Rs. 2,403-8-3, being the rent due for the time mentioned in the plaint, exclusive of the period of the alleged interruption.

At the hearing the following issues were raised :—

(1) Whether, having regard to the interruptions referred to in the written statement, defendant is liable to pay rent and taxes for the periods mentioned.

(2) Whether by reason of the prohibition, by the proper authorities, of the use of the property for the habitation of the defendant's horse-keepers, the lease became void as stated in the 4th paragraph of the written statement ?

(3) Whether, in the event of the 1st issue being answered in favour of the plaintiff, the defendant is entitled to recover from the plaintiff damages for the disturbance of his enjoyment, at the rate of Rs. 215 per mensem, during the period of such disturbance ?

(4) Whether the defendant is entitled to recover from the plaintiff a sum of Rs. 793-7-6, being the expenses incurred by the defendant in consequence of the interruptions ?

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(b) Whether the plaintiff is entitled to recover any and what sum in excess of the amount brought into Court by the defendant on the 16th February?

Vicaji, for plaintiffs:—There was no formal lease of the premises. They were let merely under articles of agreement for a lease. There is no covenant for quiet enjoyment. The agreement was made before the Transfer of Property Act (IV of 1882) was applied to Bombay and long before the plague appeared in Bombay. He referred to *Bombay and Persia Steam Navigation Company v. Rubattino Company*⁽¹⁾; *Newby v. Sharpe*⁽²⁾.

Raikes, for defendant:—A covenant for quiet enjoyment is implied—Woodfall Landlord and Tenant (14th Ed.), p. 695; *Rassam v. Douzelle*⁽³⁾; *Lali Konwar v. Carter*⁽⁴⁾; Contract Act (IX of 1872), Sec. 56.

FULTON, J.—In this case the plaintiff has sued to recover rent due from the defendant under a lease for ten years, dated the first September, 1890.

The defence is that, as the defendant was obliged to vacate the premises under notices from the plague authorities, he is not liable for the rent for the periods mentioned in the written statement, or in the alternative is entitled to certain sums as damages for disturbance of his enjoyment.

The material facts having been admitted, the following issues were raised: (His Lordship stated the issues.)

My finding on the 1st issue is in the affirmative: on the 2nd, 3rd and 4th issues in the negative; and on the 5th in the affirmative, *viz.*, that plaintiff is entitled to recover the whole amount claimed.

The lease is anterior to the introduction into Bombay of the Transfer of Property Act, but assuming that it contains an implied contract for quiet enjoyment, it seems necessarily to follow that the contract is merely for the quiet enjoyment of the property by the tenant so long as it is lawful for him so to enjoy it. It cannot be a contract for the tenant's quiet enjoyment of the property contrary to law. Such a contract if stated in express terms would clearly be void. It would

(1) (1889) 14 Bom, 147.

(2) (1878) 8 Ch. D., 39.

(3) (1874) 23 Cal. W. R., 121.

(4) (1870) 25 Cal. W. R., 492.

be equally void if the intention could be implied. Consequently, I think that, when under the provisions of Act III of 1897 it became unlawful for the tenant to occupy the premises in the manner contemplated by the lease, there was no breach of the lessor's contract for quiet enjoyment. There being then no breach by the lessor, there is no ground on which the lessee can either be relieved of the rent which he agreed to pay or be awarded damages against the lessor. The lease doubtless might have provided that, in the events which have happened, the tenancy should come to an end, but those events were not foreseen, and were, therefore, not provided for. The case of *Newby v. Sharpe*⁽¹⁾ is in point. Of course, that was a case where the conditions had been expressed, but I cannot read into the implied condition for quiet enjoyment a guarantee against acts of the Legislature. No authority was cited for such a construction of the lease.

Decree for plaintiff for sum claimed and costs, and interest on judgment at 6 per cent.

Decree for plaintiff.

Attorneys for the plaintiff :—Mr. K. D. Shroff.

Attorneys for the defendant :—Messrs. Crawford, Brown & Co.

(1) (1878) 8 Ch. D., 39.

APPELLATE CIVIL.

Before Sir L. A. Kershaw, Kt., Chief Justice, and Mr. Justice Fulton.

PARVATI (ORIGINAL PLAINTIFF), APPELLANT, v. GANPATI ROKDAJI
 NAIK AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

1898.

December 8.

Limitation Act (XV of 1877), Sec. 5—Appeal not presented in time—Sufficient cause for delay—Discretion of Judge—Second appeal—Civil Procedure Code (Act XIV of 1882), Sec. 584—Exercise of discretion not to be interfered with.

Where an appeal has been dismissed as barred by limitation, the lower Court holding that there was no sufficient cause for not presenting it within the prescribed time, the High Court can only interfere in second appeal if that decision

* Second Appeal, No. 924 of 1897.