APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Telang.

ONKARA'PA AND OTHERS (ORIGINAL DEFENDANTS), APPELLANTS, *v.* SUBA'JI PA'NDURANG (ORIGINAL PLAINTIFF), RESPONDENT; AND SUBA'JI PANDURANG (ORIGINAL PLAINTIFF), APPELLANT, *v.* ONKARA'PA AND OTHERS, (ORIGINAL DEFENDANTS), RESPONDENTS.* 1890. *July* 10.

Landlord and tenant—Ejectment suit—Tenant expending money on the premises.

In a suit for ejectment it appeared that the defendants and their father had occupied the premises in question for over forty years, and that the house, which had originally been a cow-house, had been altered by the defendants and converted into a dwelling-house. The District Judge found that as the plaintiff had allowed the defendants to rebuild and virtually erect a new house, it would not be equitable to allow him to eject them from it, and he accordingly refused the plaintiff a decree for ejectment, but gave him a decree against the defendants for three years' rent. On appeal to the High Court the decree was varied by directing that the plaintiff should recover possession of the land and house, there being no evidence that the defendants had entered on the land for building purposes or had built "in the hope or encouragement by the plaintiff of an extended term or an allowance for expenditure" (*Ramsden* v. *Dyson*(1)), and, consequently, the defendants had no equity against the plaintiff.

EJECTMENT suit. These were cross second appeals from a decision of J. L. Johnston, District Judge of Dharwar.

The plaintiffs sued to eject the defendants from a certain house and to recover Rs. 12 for three years' rent.

It appeared that the house was originally let to the defendants' father many years previously; that when it was first let, it was a cow-house, but that the defendants had made alterations in it, and had converted it into a dwelling-house.

The defendants denied the plaintiff's title, alleging that the house was their ancestral property.

The Court of first instance dismissed the suit.

On appeal, the District Judge held that the plaintiff was the owner of the house, and that he was entitled to recover rent from the defendants at the rate of Rs. 4 *per annum*. He further held, however, that the plaintiff was not entitled to eject the defendants, as he had allowed them to rebuild and virtually to build a new house.

* Cross Second Appeals, Nos. 229 and 246 of 1889.

(1) L. R., 1 H. L., at p. 170.

1890.

ONKARÁPA v. SUBÁJI PÁNDURANG.

The following is a portion of his judgment :—

"* * * It appears, on the whole, that the defendants have been using the cattle-house of the plaintiff's family for forty years and that they have virtually made it into a new house. They have denied plaintiff's tenancy, and are liable to be ejected now; but I do not think that equity would be done thereby, for plaintiff has allowed them to rebuild and virtually build a new house on his site. All that equity requires is that plaintiff should get his rent for the three years as claimed * * * *."

Both parties preferred appeals to the High Court.

Branson (*Ghanashám Nilkanth Nádkarni* with him) for the plaintiff:—The District Judge was wrong in holding that the defendants should not be ejected. The defendants have denied their tenancy and set up ownership. The land was not let for agricultural purposes, so that the presumption of permanent tenancy can arise—*Gungádhur Shikdár* v. *Ayimuddin Sháh Biswás*(1). The mere circumstance that the defendants were allowed, as they allege, to rebuild the house, does not give them the equitable right to remain in possession, unless they can show that the plaintiff has by his words or conduct sanctioned their doing so—*Ramsden* v. *Dyson*(2). The defendants have built at their own risk. It may be conceded that the defendants should be allowed some compensation, but the land should be delivered over to the plaintiff.

Náráyan Ganesh Chandávárkar for the respondents :—The evidence in the case shows that the present house has been standing for nearly forty-five years. If it should be held that the house, which formerly stood in its place, belonged to the plaintiff, we contend that the defendants were induced by the silence of the plaintiff, when the present house was built, to build it. The house is in the vicinity of the plaintiff's house and the presumption is that the plaintiff allowed it to be built. The fact that it has been there for so many years may well bring the plaintiff's case within the application of the rule laid down in *Gungádhur Shikdár* v. *Ayimuddin Sháh Biswás*(3).

(1) I. L. R., 8 Calc., 960. (2) L. R., 1 H. L., at p. 170.
(3) I. L. R., 8 Calc., 960.

1890.

ONKARÁPA v. SUBÁJI PÁNDURANG.

SARGENT, C. J. :—The District Judge has not found that the defendants originally entered on the land in question for building purposes, in which case the decision in *Gungádhur Shikdár* v. *Ayimuddin Sháh Biswás*(1) would apply, but that they have since been allowed to spend money on the cow-house and convert it into a dwelling-house; and he considered that under such circumstances it would not be equitable to allow the plaintiff to eject them. But to give the defendants such an equity it was necessary for them to prove that they built "in the hope or encouragement by the plaintiff of an extended term or an allowance for expenditure," as explained by Lord Kingsdown in *Ramsden* v. *Dyson*(2). But there is no admission by plaintiff, nor any evidence whatever, that such was the case. We may also remark that here the defendants have been in possession for forty years, and have probably had the full benefit of their expenditure.

We must, therefore, vary the decree of the Court below by directing that the plaintiff be put into possession of the land and house, with costs on defendants throughout. The defendants' cross appeal is dismissed with costs.

Decree varied.

(1) I. L. R., 8 Calc., 960.

(2) L. R., 1 H. L., at p. 170.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, Mr. Justice Birdwood, and Mr. Justice Telang.

RA'MCHANDRA VA'SUDEVSHET, (PLAINTIFF,) *v.* BA'BA'JI KUSA'JI, (DEFENDANT).*

1890. *July* 15.

Stamp Act I of 1879, *Sch. II, Art.* 13 (*b*)—*Construction—Lease for planting cocoanut trees.*

A person whose occupation is that of a cultivator and takes a lease of land for planting cocoanut trees is, in respect of that occupation, a "cultivator." A lease given by him is one exempt from stamp duty under article 13 (*b*) of Schedule II of the Stamp Act I of 1879 if the annual rent reserved thereby does not exceed one hundred rupees.

* Civil Reference, No. 6 of 1890.