

1925.

MARADEG
GOVIND
v.
LAKSHMI-
NARAYAN.

It seems to us, therefore, that the only remedy open to a party whose suit has been dismissed for default under Order IX, Rule 8, is to apply under Rule 9 to set aside the order of dismissal, and it is no longer open to him to apply for a review of the order under Order XLVII, Rule 1. That being our opinion, it was not open to the Subordinate Judge to entertain an application for review from the opponent, and as he had no power under the Indian Limitation Act to excuse the delay he ought to have dismissed the application. We must, therefore, make the Rule absolute with costs.

Rule made absolute.

R. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Coyajee.

1925.

July 1.

VIDYAVARDHAK SANGH COMPANY AND OTHERS (ORIGINAL DEFENDANTS).
APPELLANTS v. AYYAPPA BIN SANGRIMALLAPPA AND OTHERS
(ORIGINAL PLAINTIFFS), RESPONDENTS^c.

*Landlord and tenant—Disclaimer of landlord's title—Forfeiture of tenancy—
Bombay Land Revenue Code (Bombay Act V of 1879), section 84†.*

The denial of the landlord's title by a tenant who holds under section 84 of the Bombay Land Revenue Code and who is not governed by the Transfer of Property Act, works a forfeiture of the tenancy. Such a tenant can be sued in ejectment without a formal notice to quit.

Venkaji Krishna Nadkarni v. Lakshman Devji Kandar⁽¹⁾, followed.

Rama Ranchhod v. Sayad Abdul Rahim⁽²⁾, explained.

^c Second Appeal No. 455 of 1924.

† The material portion of the section runs as follows :—

“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.”

⁽¹⁾ (1895) 20 Bom. 354.

⁽²⁾ (1920) 45 Bom. 303.

1925.

 VIDYA-
 VARDHAK
 SANGH
 COMPANY
 v.
 AYYAPPA.

SECOND appeal from the decision of N. K. Bapat, First Class Subordinate Judge, A. P., at Bijapur reversing the decree passed by D. V. Yennimadi, Subordinate Judge at Bagalkot.

Suit in ejectment.

Before the year 1878, the plaintiffs had let the land in dispute to defendant No. 3.

In the course of certain proceedings before the Mamlatdar, defendant No. 3 denied plaintiff's title to the land on July 11, 1909.

On April 8, 1909, defendant No. 3 made a gift of the land to his daughter, defendant No. 4, treating the land as his own. On May 15, 1921, defendant No. 4 conveyed it by way of gift to defendant No. 1.

The plaintiffs filed the present suit on July 8, 1921, to eject the defendants, without giving them any notice to quit.

The trial Judge dismissed the suit on the ground that want of notice to quit vitiated the suit.

This decree was on appeal reversed by the lower appellate Court on the ground that disclaimer of landlord's title by defendant No. 3 operated to forfeit the tenancy. The claim was therefore decreed.

Defendants appealed to the High Court.

Nilkant Atmaram, for the appellants.

H. B. Gumaste, for respondents Nos. 1 and 2.

MACLEOD, C. J.:—This action was instituted by the plaintiffs to recover possession, together with mesne profits and costs, of the land in dispute from the defendants, alleging that the land belonged to the father of defendant No. 3 who agreed to look after the trees, plant new trees and pay rent equal to the assessment, and that defendant No. 3 having denied their title they were entitled to take possession without giving any notice to quit.

1925.

VIDYA-
VARDHAK
SANGH
COMPANY
v.
Ayyappa.

The learned trial Judge found all the allegations of the plaintiffs proved, but thought that notice to quit was necessary, and on that ground he dismissed the plaintiffs' claim for possession.

The appellate Judge having referred to various decisions said :—

"From the rulings cited above it is clear that a disclaimer of the landlord's title works forfeiture. The fact that there has been a disclaimer is not disputed. I, therefore, hold that no notice to quit is necessary in this case."

Accordingly the decree of the trial Court was set aside and a decree was passed for possession.

In *Venkaji Krishna Nadkarni v. Lakshman Deuji Kandar*⁽¹⁾, the following question was referred for decision of the Full Bench (p. 360) :

"Whether in this Presidency a disclaimer of the lessor's title by the annual tenant of a holding to which section 84 of the Land Revenue Code (Bom. Act V of 1879) applies, is, if made prior to suit, a sufficient cause of action to enable the lessor to recover possession without proof of notice to quit?"

Sir Charles Sargent in giving judgment of the Full Bench said (p. 361) :—

"The object of section 84 is to define the nature of the contract creating an annual tenancy, which, it is to be remarked, may be for agricultural or other purposes both as regards the period during which it runs and the landlord's power of determining it. The landlord's right of forfeiture, however, arising from disclaimer of his title, although it is treated as determining the tenancy at his election, is no part of the contract of tenancy, but is a right which the law implies in all cases from the relationship of landlord and tenant. Had it been the intention of the Legislature to exclude the right of forfeiture in the case of all annual tenancies, we should have expected to find it expressly provided for. Section 111 of the Transfer of Property Act (IV of 1882), which gives the right of forfeiture, is, in common with all the provisions of Chapter V of the Act, declared to be inapplicable by section 117 of the Act in the case of all leases for agricultural purposes, except so far as the Local Government may have otherwise declared. That Act, however, did not become the law of this Presidency before January, 1893, subsequent to the institution of this suit. In *Vithu v. Dhondi*⁽²⁾, which was a case in which it was assumed that notice was required by section 84 of the Land Revenue Code, it was not contended that the right of forfeiture had been taken away by the section. We think, therefore, that the first question should be answered

⁽¹⁾ (1895) 20 Bom. 354.

⁽²⁾ (1890) 15 Bom. 407.

in the affirmative assuming the case not to be governed by section 117 of the Transfer of Property Act."

The tenancy in this case commenced before 1878, so that the provisions of the Transfer of Property Act would not apply.

In *Ochhavlal v. Gopal*⁽¹⁾, the question arose whether an annual tenancy to which the Land Revenue Code applied could be determined without a notice in writing by the landlord. It was urged before the Court that it could be so determined, because there was a repudiation of the landlord's title. As a matter of fact in that case, there was no repudiation of the landlord's title by the tenant. Apart from that, the Court considered that effect must be given to the express provisions of the Land Revenue Code. As no such notice was given the annual tenancy had not been determined. But in that case the defendant tenant did not disclaim the landlord's title, but merely contended that the plaintiffs had no right to expect payment of rent on a fixed date. Therefore the relationship of landlord and tenant still existed.

The facts are somewhat similar in the case of *Rama Ranchhod v. Sayad Abdul Rahim*⁽²⁾, where it was held that the setting up of a permanent tenancy by a yearly tenant is not tantamount to disclaimer of the landlord's title. Such a tenant is, therefore, entitled to a notice to quit before he can be evicted by the landlord.

It must be noted that in the case of *Ochhavlal v. Gopal*⁽¹⁾, the Full Bench decision in *Venkaji Krishna Nadkarni v. Lakshman Devji Kandar*⁽³⁾, was not referred to.

In *Maharaja of Jeypore v. Rukmini Pattamah-devi*⁽⁴⁾ it was said in the judgment of the Privy Council that the repudiation of a landlord's title by the tenant

⁽¹⁾ (1907) 32 Bom. 78.

⁽³⁾ (1895) 20 Bom. 354.

⁽²⁾ (1920) 45 Bom. 303.

⁽⁴⁾ (1919) 42 Mad. 589; L. R. 46 I. A. 109.

1925.

VIDYA-
VARDHAK
SANGH
COMPANY
v.
AYYAPPA.

would in certain circumstances work a forfeiture. This is not the ancient Indian law, but has been adopted by the Courts from the law of England, and is now embodied in the Transfer of Property Act, 1882, section 3 of which merely gives statutory form to a rule already in force. The denial which operates a forfeiture must—now—be by matter of record before institution of any suit for forfeiture, and must be in clear and unmistakable terms.

It may also be noticed that in *Rama Ranchhod v. Sayal Abdul Rahim*⁽¹⁾, Mr. Justice Fawcett said (p. 311):—

“In the case of an agricultural lease such as the present, section 84 of the Land Revenue Code lays down that in the absence of any special agreement in writing to the contrary an annual tenancy shall require for its termination a notice given in writing in a certain form. Therefore, even where there has been a disclaimer of the landlord’s title, such notice is necessary to determine an annual agricultural tenancy in this Presidency.”

His Lordship referred to *Vithu v. Dhondi*⁽²⁾ and *Ochhavlal v. Gopal*⁽³⁾.

But in the first place, that particular question was not before the Court. Secondly, no reference was made to the Full Bench decision in *Venkaji Krishna Nadkarni v. Lakshman Devji Kandar*⁽⁴⁾. We think then that this case comes within the purview of the Full Bench decision, and that no notice was required to determine the tenancy, once the tenant had disclaimed the landlord’s title. We, therefore, confirm the decision of the lower appellate Court and dismiss the appeal with costs.

COYAJEE, J. :—I agree.

Appeal dismissed.

R. R.

(1) (1920) 45 Bom. 303.

(2) (1890) 15 Bom. 407.

(3) (1907) 32 Bom. 78.

(4) (1895) 20 Bom. 354.