ments and only gave them a small quit rent which was expressly declared to be not capable of enhancement. That as a general principle a ghatwal is not competent to grant a lease in perpetuity and his successors are not bound to recognize such an incumbrance, was laid down by the learned Judges of this Court in the case of *Grant and the Court of Wards* v. *Bungshee Deo* (1). We find nothing in the circumstances of the case before us to take it out of the general rule which was propounded in that case. We must therefore hold that the mukuraree leases were invalid. It, however, appears that one of the three grantors of the lease of a 12 annas share, *viz.*, Madhab Roy, is still alive, being defendant No. 7 and that he is still a ghatwal. The learned District Judge has held that as he alone could not grant a lease for 12 annas share and as his share in the ghatwali tenure is not known in this case, therefore the lease must be declared inoperative even as against him. We think that this must be so, especially as the lease is one and indivisible. What equities, if any, the lessees may have against Madhab Roy for recovery of a portion of the salami or otherwise is a question we are not now called upon to determine. In the result the appeal will be dismissed with costs.

Appeal dismissed.

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29 C. 231.

Before Mr. Justice Rampini and Mr. Justice Pratt.

MOHENDRA NATH SARKAR *v.* BISWANATH HALDAR.*

[13th December, 1901.]

Bengal Tenancy Act (VIII of 1885), s. 49, cl. (6)—Under-raiyat holding out under a written lease—Notice to quit, requisites of—Notice at the instance of the landlord signifying to the under-raiyat that the landlord has called upon him to quit the land, whether sufficient.

[232] In a notice to an under-raiyat to quit, s. 49, cl. (6) of the Bengal Tenancy Act does not prescribe any period within which the under-raiyat must quit the land. All that it says is that the tenant shall not be required to quit the land before the end of the agricultural year next following the year in which the notice to quit is served by the landlord. Therefore, although the notice to quit may contain no specification of the period within which the under-raiyat is required to quit or may require him to quit before the end of the agricultural year next followingthe year in which the notice to quit was served, that does not make the notice to quit bad, unless the under-raiyat is sued in ejectment before the period when he is liable to be removed from the land.

The notice need not be actually signed by the landlord himself. It is sufficient, if the notice is at the instance of the landlord calling upon the under-raiyat to quit the land.

THE plaintiff, Mohendra Nath Sarkar, appealed to the High Court.

This appeal arose out of an action brought by the plaintiff for ejectment of an under-raiyat on giving notice. The allegation of the plaintiff was that the defendant was an under-raiyat under him, holding land otherwise than by a written lease; that he served a notice under s. 49, clause 6 of the Bengal Tenancy Act on the defendant asking him to quit

* Appeal from Appellate Decree No. 668 of 1900, against the decree of Babu Ram Gopal Chaki, Subordinate Judge of 24-Pergunnas, dated the 22nd of February 1900, reversing the decree of Babu Apurba Chandra Ghose, Munsif of Diamond Harbour, dated the 14th of August 1890.

(1) (1871) 15 W. R. 88.

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29 C. 231.

land, which he refused to do, and hence this suit was brought. The defence mainly was that the alleged notice was not sufficient in law. It appeared that the notice was served through the Court. The notice was dated Pous 1303 B. S., and the defendant was required to quit the land from 1st Baisak 1304 B. S. The suit for ejectment was filed on the 1st Baisak 1305. The Court of First Instance having held that the notice was sufficient and good in law, decreed the plaintiff's suit. On appeal, the learned Subordinate Judge, Babu Ram Gopal Chaki, having held that the notice was not a proper notice, inasmuch as it was issued and served by the local Munsif and not by the landlord himself, and also as it required the defendant to vacate his land at the end of 1303 B. S., whereas under the law the defendant should have been required to quit his land at the end of the agricultural year next following the year in which the notice professed to have been served, reversed the decision of the First Court and dismissed the suit.

[233] Babu *Narendra Chunder Bose* for the appellant.

Babu *Shyma Prosanna Mazumdar* for the respondent.

RAMPINI and PRATT, JJ. This is an appeal against a decision of the Subordinate Judge of the 24-Pergunnas, dated the 22nd of February 1900.

The suit out of which the appeal arises is brought by the plaintiff for ejectment of his under-raiyat, the defendant, after service of notice to quit upon him under s. 49 (B) of the Bengal Tenancy Act.

The first Court has given the plaintiff a decree.

The lower Appellate Court has disallowed the plaintiff's prayer for ejectment and dismissed the suit.

The plaintiff now appeals to us. The Subordinate Judge has apparently dismissed the suit for two reasons, namely, (1) that the notice to quit was not properly served upon the defendant, having been served through the Munsiff's Court, and not by the plaintiff himself, and (2) that the notice of the plaintiff was bad in law, because it was served in 1303 and required the defendant to vacate at the end of 1303.

The learned pleader for the appellant urges that the Subordinate Judge is wrong on both these points. In the first place, he says that the Subordinate Judge has overlooked the decision of this Court in the case of *Naharullah Patwari* v. *Madan Gazi* (1), in which it is pointed out that the law does not prescribe, for a notice to an under-raiyat to quit, any period in which the under-raiyat must quit the land; and that all it says is that the tenant shall not be required to quit the land before the end of the agricultural year next following the year in which the notice to quit is served by the landlord; and, therefore, although the notice to quit may contain no specification of the period within which the under-raiyat is required to quit or may require him to quit before the end of the agricultural year next following the year in which the notice to quit was served, that does not make the notice to quit bad, unless the under-raiyat is sued for ejectment before the period when he is liable to be removed from the land.

[234] Now such is not the state of things in the present case, because the notice to quit to the defendant was served in Pous 1303, and though he was required to quit in Baisak 1304, yet the suit was not instituted against him till 1st of Baisak 1305, by which time the agricul-

(1) (1896) 1 C. W. N. 133.

1901 DEC. 18.

APPELLATE CIVIL.

29 C. 231.

tural year following the year in which the notice to quit was served on the tenant had expired. Therefore it appears to us, on the authority of the ruling in the case of *Naharullah Patwari* v. *Madan Gazi* (1), that the defendant in this case is liable to ejectment from his land notwithstanding the terms of the notice served on him.

The learned pleader for the respondent cites the case of *Hemanginee Chaudhurani* v. *Srigobinda Chaudhuri* (2). But it appears to us that that case has no reference to under-raiyats. It refers to notices to quit served upon annual tenants, who are not under-raiyats. It has accordingly no application to the present case.

Then, the Subordinate Judge has held that the notice to quit was not properly served on the tenant in this case, inasmuch as it was served by the Munsiff, and not by the landlord. Now, no doubt the law does require that the notice should be served by the landlord; but we learn from the report of the Court peon, who served the notice in this case, that the plaintiff actually went with the peon and handed the notice himself to the tenant, and that the notice to quit was properly served on him in the way that summonses are usually served, that is to say, it was tendered to the under-raiyat personally, who received it and gave a receipt for it.

Now, if these are the facts of the case, then the service of notice in this case was not bad. This, however, is not a Court of fact; and we cannot go into the evidence and see whether the notice was or was not properly served under Rule 3 of Chapter I of the Government Rules under the Bengal Tenancy Act.

We must, therefore, remand the case to the lower Appellate Court to have this point decided.

[235] The pleader for the respondent raised a further question as to the form of the notice. With regard to this we need only say that the law prescribes no form of notice. The learned pleader for the respondent also says that the notice was given by the Munsiff and was not signed by the landlord. But the law does not apparently require that the notice should be actually signed by the landlord. It is sufficient, if the notice is at the instance of the landlord calling upon the under-raiyat to quit the land; and it is quite immaterial whether the notice is actually given by the landlord himself or at his instance, provided that the notice signifies to the under-raiyat that the landlord has called upon him to quit the land.

With these remarks we set aside the decree of the lower Appellate Court and remand the case to the Subordinate Judge.

The costs will abide the result.

Appeal allowed; case remanded.

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29 C. 235.

ORIGINAL CIVIL.

Before Mr. Justice Sale.

NANDO LAL *v.* CHUTTERPUT SING. * [15th February, 1902.]

Decree, transmission of—Execution—Assignee of Decree—Notice—Civil Procedure Code (Act XIV of 1882), s. 232.

* Suit No. 65 of 1900.

(1) (1896) 1 C. W. N. 133. (2) (1901) 6 C. W. N. 69.