this view of the Court Fees Act would in many cases work so extravagantly as to make the Court-fee payable under it rather in the nature of a penalty as remarked by STRAIGHT, J., than as reasonable stamp duty, and I therefore willingly support the opinion of my colleagues on the point"; and Mr. Justice STRAIGHT'S judgment which deals with the question at length, clearly shows the principle upon which Courts of Justice should act in these matters.

The parties in these cases are the same, the evidence is the same, only the plots happen to be different and the tenants, owing to whom separate references were made in the Court below are not parties to these appeals. No provision of the Civil Procedure Code has been brought to our notice precluding us from making the order for consolidation, and we think that in the interests of justice it is expedient that we should make such an order. We accordingly direct that the appeals be consolidated, and that the appellants to pay Court-fees upon the value of the consolidated appeals under s. 17 of the Court Fees Act, subject to the limitation under Article 1, Schedule I of that Act, namely, Rs. 3,000. The references will be confined to the landlord's interests, that is two-thirds of the value of the land. We allow the appellants time until Monday, the 15th instant, to put in the requisite Court-fee.

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29 C. 148.

Before Mr. Justice Ameer Ali and Mr. Justice Pratt.

GOPAL MONDAL *v.* ESHAN CHANDER BANERJEE.*
[10th and 17th May, 1901.]

Bengal Tenancy Act (VIII of 1885,) s. 85—Subletting, restrictions on Validity of sub-lease granted by raiyat for more than nine years—Sublease registered before the commencement of the Bengal Tenancy Act.

[149] Where a raiyat has, without the consent of his landlord, granted a sub-lease by an instrument registered before the commencement of the Bengal Tenancy Act, the sub-lease shall not be valid for more than nine years from the commencement of the Act, as against the landlord, but not as against the raiyat.

THE defendants, Gopal Mondal and others, Nos. 6, 7, 11, 12, 13, 14, 15, and 16 appealed to the High Court.

The plainfiff, Eshan Chunder Banerjee, also filed a memorandum of objection under s. 56 of the Civil Procedure Code.

This appeal arose out of an action for *khas* possession of the disputed land on ejectment of the defendants after notice to quit. The plaintiff alleged that the defendants Nos. 1 to 10 held the disputed land under a korfa settlement made by the predecessors in interest of the plaintiff; that the defendants Nos. 11 to 16 were in possession of the land under a mortgage executed in their favour by the other defendants; that the tenant-defendants were under-raiyats, and that therefore the korfa lease under which they held was legally ineffective and not binding on the plaintiff; that the Bengal Tenancy Act having come into operation, and the defendants' term of occupation of nine years having expired, they had no longer any right to hold the land; and that whatever right the

* Appeal from Appellate Decree No. 1118 of 1899, against the decree of K. N. Roy, Esq., District Judge of Bankura, dated the 22nd of March 1899, modifying the decree of Babu Satya Charan Ganguli, Munsif of Bankura, dated the 13th of September 1897.

1901 MAY 10 & 17.

APPELLATE CIVIL.

29 C. 148.

tenant-defendants had, was extinguished by the fraudulent and illegal mortgage executed by them as aforesaid.

The defendants, who put in written statements, contended, *inter alia*, that the plaintiff was a tenure-holder and the tenant-defendants were raiyats under him; that the tenant-defendants had acquired a permanent transferable right to the land in dispute under the registered lease granted by the plaintiff's vendors to them and their predecessors, to which the plaintiff himself was an attesting witness; that even if they be held to be under-raiyats, still as the settlement was made long before the Bengal Tenancy Act had come into operation, *viz.*, in April 1879, that Act was not applicable to the case; and that they were not liable to ejectment.

The Munsif held that the defendants Nos. 1 to 10 were not under-raiyats in regard to plots Nos. 113 and 114, but that they were under-raiyats in regard to the other plots of land in suit; **[150]** that there was no legal service of notice on the defendants; that, although the lease under which the defendants Nos. 1 to 10 held, might not be valid as against the plaintiff's landlord, yet it did not lie in the mouth of the plaintiff, who represented the lessors, to say that the terms thereof were illegal; and that s. 85, cl. (3), of the Bengal Tenancy Act had no application to the case. He accordingly dismissed the suit.

On appeal, the District Judge agreed with the Munsif in holding that, except as regards plots Nos. 113 and 114, the plaintiff's status was that of a raiyat and the defendants Nos. 1 to 10 were under-raiyats holding under him. Then with regard to the sub-lease under which the defendants Nos. 1 to 10 held, the District Judge was of opinion that, as it was granted without the consent of the superior landlord, having regard to ss. 85 and 178 (3), cl. (*e*), of the Bengal Tenancy Act, it could be operative only for nine years from the commencement of that Act, and that it was altogether void after those years. He also held that the notice, served on the defendants under cl. (*b*) of s. 49 of the Bengal Tenancy Act, was a valid and sufficient notice. He accordingly decreed the suit in respect of all the plots except Nos. 113 and 114.

Dr. *Rash Behary Ghose* and Babu *Digambar Chatterjee* for the appellants.

Babu *Saroda Churn Mitter* for the respondent.

Cur. adv. vult.

AMEER ALI AND PRATT, JJ.—The question involved in this second appeal turns upon the construction of s. 85 of the Bengal Tenancy Act. The plaintiff alleges that he has acquired by purchase the disputed land, which consists of several plots, that the defendants Nos. 1 to 10 were korfa raiyats under his vendor and, inasmuch as under s. 85 of the Tenancy Act, the sub-leases granted to them by the previous holder purporting to be *mocurrari* had expired at the end of nine years from the commencement of the Tenancy Act, he seeks in this suit to recover *khas* possession of the land in question. He also alleged that he had served the defendant **[151]** with a notice under s. 49 of the Tenancy Act. The defendants 11 to 16 are mortgagees under the defendants 1 to 10.

The defendants Nos. 6 and 7 filed written statements in which among other pleas they urged that the provisions of s. 85 of the Tenancy Act, which debar the grant of sub-leases for more than nine years, do not apply to under-raiyats, who had obtained sub-leases before the Act came into force, and that, as their registered pottah was executed some

1901
MAY 10
& 17.

APPELLATE
CIVIL.

29 C. 148.

time in the year 1879 (28th *Chait* 1285), the plaintiff was not entitled to recover *khas* possession. They also alleged that the plaintiff was himself an attesting witness to their document and was estopped from raising any question regarding its validity. It is not necessary to refer to the other objections in the written statement. The assignee defendants took similar objections.

The suit was tried by the Munsif of Bankura who, among other issues, framed the following: "Can plaintiff set aside the *bundobust* by the pottah after expiry of nine years from the time when the Bengal Tenancy Act was enforced? Was the pottah executed with the consent of the landlords of the executants?" He held upon the objections of the defendants that, in respect of two of the plots included in the lands in suit, the plaintiff was a tenure-holder and the defendants held the same as raiyats, and that, consequently, the suit so far as those two plots were concerned, was not maintainable. He held also that, although the sub-lease was not proved to have been granted with the sanction of the superior landlord, yet as s. 85 sub-s. (3) invalidated the grant only as against the landlord, and as the present question was between the assignee of the grantor and the grantees, the plaintiff was not entitled to recover. He accordingly dismissed the suit.

On appeal the officiating District Judge of Bankura has taken a different view of the section. He thinks that the Legislature by s. 85 of the Tenancy Act intended to prohibit *in toto* sub-letting for more than nine years. And he adds: "The under raiyat might have suffered by this provision, but the great object of the Bengal Tenancy Act was to rehabilitate and protect the occupancy raiyat and to confirm him in his holding by all possible [152] means, and s. 85 seems to me to have been framed to assist that general purpose of the Act." Proceeding upon this reasoning he held that the lease given by the plaintiff's assignor to the defendants under-raiyats, came to an end on the expiration of nine years from the commencement of the Tenancy Act.

Now s. 85 of the Tenancy Act runs as follows:—

(1) If a raiyat sub-lets otherwise than by a registered instrument, the sub-lease shall not be valid against his landlord unless made with the landlord's consent.

(2) A sub-lease by a raiyat shall not be admitted to registration, if it purports to create a term exceeding nine years.

(3) Where a raiyat has, without the consent of his landlord, granted a sub-lease by an instrument registered before the commencement of this Act, the sub-lease shall not be valid for more than nine years from the commencement of this Act.

This section, like some others, bears evident marks of compromise and, consequently, of somewhat hasty drafting. Sub-s. (1) deals with sub-leases granted after the Act has come into force. It provides that, if a sub-lease is granted otherwise than by a registered instrument, it shall not be valid *against the landlord*, unless made with his consent. Sub-s. (3) refers to sub-leases granted before the commencement of the Act. Sub-s. (2) has no connection with sub-s. (3), as it necessarily deals with sub-leases granted after the passing of the Act; for it directs that no sub-lease should be admitted to registration, if it purports to create a a term exceeding nine years. It is contended that sub-s. (3) must also be read with the light of sub-s. (2) and, if this is done, it will show that the intention of the Legislature was that sub-leases granted before the

1901 MAY 10 & 17.

APPELLATE CIVIL.

29 C. 148.

commencement of the Act without the consent of the landlord, would be absolutely invalid against the whole world, and not merely as against the landlord. If this contention be correct, the result would be that a raiyat, who has obtained any benefit under the lease in the shape of a bonus, would be entitled to retain the same, although the lease in consideration of which he has received the same will be set aside at the end of nine years.

[153] The District Judge himself considers that, if sub-section (3) of s. 85 is construed as he reads it, it would operate more harshly than the provisions of sub-section (1). We also think that, if the construction contended for on behalf of the plaintiff is given effect to, under-raiyats whose sub-leases had been granted prior to the commencement of the Act would be placed in a far worse position than those who had acquired their sub-leases after the Act came into force. An under-raiyat taking a sub-lease for more than nine years after the commencement of the Act is put upon his guard by the refusal of the Registrar to register the document: if he has paid any consideration for such sub-lease, he is enabled by the refusal of registration recover the same from the lessor. But an under-raiyat who had taken a lease before the Act is in a very different position; he paid the bonus upon a contract which, when entered into, was perfectly valid in law. And if the Act *ipso facto* put an end to such a sub-lease at the end of nine years, the under-raiyat has no remedy against his lessor. Having regard to the consequences that would result from such an extreme construction of sub-section (3), and also the fact that in the interpretation of statutes the Court must not impute to the Legislature a desire to confiscate or to do away with rights, which have already been lawfully created or which have lawfully vested, we are not prepared to agree with the opinion of the learned District Judge that the object of the Legislature was to sweep away after the expiration of nine years from the date the Act, came into force, all sub-leases granted raiyats before the Act, if made without the consent of the landlord. There is certainly nothing in the law itself or in general principles to suggest that the Legislature intended to relieve grantors from their contracts. To give effect to the view expressed by the District Judge would be to allow frauds of a very gross character to be perpetrated by raiyats. They will be enabled to come forward under the authority of the law and ask that sub-leases deliberately granted by them may be declared invalid on the expiration of nine years from the commencement of the Act, without any commensurate return of the benefit they might have received. Such a construction to our mind does not seem to be warranted by the law. In our opinion sub-section (3) invalidates sub-lease [154] granted before the Act without the consent of the landlord as against the landlord, after the expiration of nine years from the passing of the Act.

In this connection it may be observed, as has been remarked by the Munsif, that the plaintiff himself was an attesting witness to the sub-lease, and, without saying that he was estopped by his conduct, it is clear that there is no equity in his favour. In this view of the law, we think the decree of the District Judge must be set aside and the suit dismissed with costs in all the Courts.

Appeal decreed.