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[243] APPELLATE CIVIL.

Before Sir Francis W. Maclean, K.C.I.E., Chief Justice, Mr. Justice
Bodilly and Mr. Justice Mookerjee.

JYOTISH CHANDRA MUKERJEE v. RAMANATH BHADRA.*

[18th July, 1904.]

*Lease—Service tenure—Medical practitioner, Services of, in lieu of rent—Notice to quit
—Transfer of Property Act (IV of 1882) ss. 105, 106.*

Where A the owner of a house, by an agreement allowed B to occupy the house in consideration of his rendering services, as a medical practitioner, to A and his family in lieu of rent :

Held that such an agreement amounted to a 'lease' as defined in s. 105 of the Transfer of Property Act, 1882, and was terminable at the option of either party by 15 days' notice expiring with the end of a month of the tenancy.

[Ref. 59 I. C. 893.]

APPEAL by Jyotish Chandra Mukerjee, the defendant, under s. 15 of the Letters Patent.

This appeal arose out of a suit brought by the plaintiffs, respondents, against the defendant appellant, for the recovery of possession of a house and homestead lands, mesne profits in respect thereof, and other reliefs.

The plaintiffs, who were the sebaitis of certain deities, had agreed with the defendant who was a medical practitioner, to allow him to occupy a house and premises belonging to them, in consideration of his rendering services, as a medical practitioner to the plaintiffs and their families.

In accordance with the agreement the defendant entered into, and remained in possession of, the property for several years. Subsequently disputes arose between the parties by reason of the negligence of the defendant in his treatment of the plaintiffs and their families, as their family-doctor, and the plaintiffs requested him to give up possession of the premises, which he refused to do.

[244] The plaintiffs then served him, on the 15th day of Magh 1306 B. S., with a notice to quit the premises on the 1st day of Falgun following, and on his continuing in possession, brought this suit for ejection and mesne profits.

The defendant, in his written statement, denied the title of the plaintiffs, and pleaded, *inter alia*, that the notice was not a valid and sufficient one in law, and that the suit was barred by limitation.

The Court of first instance held that the notice was sufficient, and decreed the suit in favour of the plaintiffs on all the issues.

The Subordinate Judge, on appeal preferred by the defendant, reversed this decree of the first Court, holding that the notice was not a valid one under s. 106 of the Transfer of Property Act, 1882, and he accordingly dismissed the suit. Against this decision the plaintiffs appealed to the High Court.

The second appeal was heard by MITRA, J., and his Lordship delivered the following judgment :—

MITRA, J. This case must go back for the trial of the following question :—*first*, whether the notice given by the plaintiffs to the defendant to quit is reasonable having regard to the facts and circumstances of the case ; *second*, whether the

* Letters Patent Appeal, No. 23 of 1904, in Appeal from the Appellate Decree No. 2495 of 1901.

plaintiffs have their alleged right to the property in suit either as owners or as sebaits; and *third*, whether the defendant has *maurusi lakhiraj* right as set up by him.

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The plaintiffs alleged in their plaint that they had allowed the defendant, who is a medical practitioner, to occupy the property in suit for medical attendance instead of payment of rent; that the defendant was negligent in the performance of his duties as such medical attendant of the family of the plaintiffs, and as there was misunderstanding between the parties the plaintiffs gave notice to the defendant to quit; they further alleged that the property had been transferred to certain deities and the medical attendance of the defendant was unnecessary. They further alleged that they have given notice to the defendant on the 15th Magh 1306, to quit on the 1st of Falgoon following. The defendant denied the title of the plaintiffs, set up his own title as *maurusi lakhirajdar*, pleaded the bar of limitation, and also want of notice.

The Munsif who tried the case held, on the question of notice, that it was sufficient in law and decreed the suit finding in favour of the plaintiffs on all the issues. The Subordinate Judge on appeal has held the section 106 of the Transfer of the Property Act applied to the case, and as the notice was served on the 15th Magh 1306 and the last day of that month was 29th there were not 15 clear days between the date of the service of notice and the date of the termination of the tenancy; the notice he has said was therefore bad; and he had accordingly dismissed the suit.

The learned vakil for the appellants has contended before me that no notice was necessary, and that even if any notice was necessary, the Court ought to have [245] found it to be sufficient irrespective of section 106 of the Transfer of Property Act which has no application to the case.

Upon the facts stated in the plaint it is sufficient to say that no notice was necessary. The plaintiffs in the 5th paragraph of their plaint were not willing to rely upon the mere allegation that the defendant had failed to perform his part of the duties imposed upon him, but they also relied on the want of necessity on their part to require medical services from him. It is not strictly a case in which the defendant had failed to perform services, and there was a forfeiture of the service tenancy.

I think the proper view upon the facts alleged in the plaint and attempted to be proved by the evidence is that the plaintiffs were unwilling to accept the services of the defendant, and also that such services were no longer necessary. In this view I think notice to quit was necessary and it must be reasonable.

In *Lakshmi v. Chendri* (1) it has been held that where land is held under service tenure and is resumable at the will of the grantor, the holder cannot be ejected before reasonable notice to surrender the land is given. The same view was taken by our Court in *Radha Pershad Singh v. Budhu Dashad* (2). As to whether in any particular case notice is reasonable or not is a question of fact to be determined from the various circumstances of the case, and if the Court finds that the notice is short by a day or two the Court may direct that the defendant should not be ejected until some time after the decree in order to enable him to make provision for his residence elsewhere.

The learned vakil for the respondent has contended that the case comes under Chapter V of the Transfer of Property Act and has been dealt with as such in both the Lower Courts, and that therefore the defendant was entitled to fifteen days' notice to quit at the end of a month of the tenancy. He relies upon the word "Service" in section 105, and says that instead of payment of rent in kind service was performed by the defendant, and that as a necessary corollary section 106 applies. The contention assumes that the lease is one 'from month to month' determinable on the part of the lessor or lessee by 15 days' notice terminating at the end of the month of the tenancy.

It does not appear to me that section 106 of the Transfer of Property Act applies to a case like this. We do not know what the date of the origin of the Tenancy was, and there is also nothing to show what the month of the tenancy, if any, was and so far as the habits and practices of the people of this country go, it may be safely affirmed that the tenancy was not one from month to month or year to year. A tenancy in a case of services performed in lieu of rent is a tenancy at will. The conditions necessary to make section 106 of the Transfer of Property Act applicable to this case are utterly wanting. I must, therefore, hold that the notice must be reasonable.

The other issues in the case were tried by the Munsif and he determined them in favour of the plaintiffs. The Subordinate Judge has not expressed any opinion on

(1) (1884) I. L. R. 8 Mad. 72.

(2) (1895) I. L. R. 22 Cal. 988.

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them. The case must therefore go back for the determination of those issues in the case including the issue as to the reasonableness of the notice.

[246] The defendant then appealed under s. 15 of the Letters Patent. Babu Golab Chandor Sarkar and Babu Sarat Chandra Dutt, for the appellants.

Babu Joy Gopal Ghose, for the respondents.

MACLEAN, C. J. We think that, upon the plaintiffs' own statement in their plaint, the agreement between the parties amounted to a lease within the definition of the term as given in section 105 of the Transfer of Property Act. According to the agreement the defendant was not to pay rent but, instead of rent, he was to give his services as a family doctor to the plaintiffs. If it be once established that the bargain between the parties amounted to a lease, it must be regarded as a lease of immoveable property for some purpose other than agricultural or manufacturing purposes, in which case it must be deemed to be a 'lease from month to month' terminable, on the part of either lessor or lessee, by fifteen days' notice expiring with the end of a month of the tenancy.

Admittedly, such a notice was not given in this case, and the plaintiff's action must, therefore, fail and be dismissed with costs. The appeal is accordingly allowed with costs.

BODILLY AND MOOKERJEE, JJ. concurred.

Appeal allowed.

32 C. 247 (= 1 Cr. L. J. 201.)

[247] CRIMINAL REVISION.

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

SARAT CHANDRA GHOSE v. KING-EMPEROR.*

[21st March, 1904.]

Obscene Post-Cards—Post-Cards containing obscene advertisement—Post Office Act (VI of 1898) ss. 20, 61.

Transmission by post of printed post-cards containing an advertisement of a patent medicine, in language of an obscene character, is an offence within ss. 20 and 61 of the Post Office Act (VI of 1898).

The Queen v. Hicklin (1), Empress of India v. Indraman (2), and Queen-Empress v. Parashram Yeshvant (3) relied upon.

PETITION by Sarat Chandra Ghose and Rajendra Lal Mitra.

The first petitioner, Sarat Chandra Ghose, was the proprietor of the Alexandra Chemical Works at Baraset, 24-Parganas, and a vendor of patent medicines. He had several, ordinary post cards printed, which contained an advertisement extolling the efficacy of a specific, called the "Angels' health restoring food," in the increase of sexual power and the prevention of premature decay due to the enervating effects of local debility. It described in indecent terms the process of nature through which this end would be attained by his medicine, and promised even to the old the enjoyment of the pleasures of youth. It invited correspondence under an assurance of its being kept strictly confidential, and requested the recipient to circulate the cards amongst his friends

* Criminal Motion No. 884 of 1904, against the order of Charu Chandra Chatterji Deputy Magistrate of Baraset, dated Dec. 23, 1903.

(1) (1868) L. R. 3 Q. B. 360.

(3) (1896) I. L. R. 20 Bom. 193.

(2) (1881) I. L. R. 3 All. 637.