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[123] APPELLATE CIVIL.

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

TROILOKYA NATH ROY *v.* SARAT CHANDRA BANERJEE.*

[20th July, 1904.]

Notice to quit—Transfer of Property Act (IV of 1882), ss. 106, 116,—Lease of land not for agricultural or manufacturing purposes.

A lease of land was granted for a term of years; the property leased was not used for agricultural or manufacturing purposes and was held over by the lessee after the expiration of the term:—

Held, that in the absence of an agreement to the contrary, the lessee must be deemed to be a tenant from month to month, and entitled only to 15 days' notice to quit, expiring with the end of a month of the tenancy.

[Fol. 17 C. L. J. 167=18 I. C. 844; Ref. 20 C. L. J. 455=19 C. W. N. 489=26 I. C. 962; 49 I. C. 974; 23 C. W. N. 641=29 C. L. J. 394=51 I. C. 415; 17 C. W. N. 1073=20 I. C. 363.]

APPEAL by Troilokya Nath Roy, the defendant under s. 15 of the Letters Patent.

This appeal arose out of an action brought by the plaintiff against the defendant who was his sub-tenant, for ejectment, rent and damages. The plaintiff was a lessee for a term of three years of certain lands belonging to the Bhookailash estate. The lease had terminated at the end of Ashar 1295. B.S., but the plaintiff had held over from that time till the period hereafter mentioned, and was in possession of the lands by his tenants, the defendants.

The plaintiff alleged that on the 2nd Assin 1306 he had given the defendants notice to quit, and on their refusal to do so brought this suit for ejectment.

The defence was that no notice to quit had ever been served and, that the plaintiff himself having received notice to quit from the superior landlord, on a prior date, viz., the 15th Bhadra 1306 B.S., his tenancy had determined on the expiration of that notice, viz., on the 31st Bhadra, and the relationship of [124] landlord and tenant had therefore ceased to exist between the parties. It was further alleged that the defendants were, at the time of notice, in possession under a lease from the superior landlord to whom they paid rent direct.

The Court of first instance found that the plaintiff had in fact been served with notice to quit by the superior landlord, but that it was not a sufficient notice to determine his tenancy, which was in the opinion of the Court a yearly tenancy and could only be terminated by six months notice. The Court further found that no notice to quit had been served upon the defendant, and it accordingly passed a decree in respect of the claim for rent only.

The defendant appealed. The Additional District Judge of the 24-Parganas held, on appeal, that after the expiration of his term the plaintiff became a tenant from month to month under s. 116 of the Transfer of Property Act of 1882, inasmuch as there was no agreement to the contrary, and the land was not leased for agricultural or manufacturing purposes under s. 106, and therefore the notice to quit was sufficient, and the

* Letters Patent Appeals, Nos. 21 and 22 of 1904, from the Appellate Decrees Nos. 1304 and 1542 of 1901.

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relationship of landlord and tenant between the parties had ceased to exist on the expiration of the notice. From this decision the plaintiff appealed to the High Court.

The second appeal came on for hearing before Mitra, J. His Lordship on the 12th February, 1904, delivered the following judgment :—

MITRA, J. The lands covered by the suits which have given rise to those appeals belong to the estate known as the Bhookailash estate. On the 7th Sraban 1292 B. S they were leased to the plaintiff at a yearly jama of Rs. 54-8, on a deposit of rent of two years and for a term of three years, namely, from the month of Sraban 1292 to the month of Ashar 1295 B. S. There were covenants in the leases for their renewal after the expiry of the term.

It appears that notwithstanding that the leases terminated with the end of the month of Ashar 1295 B. S., the plaintiff was allowed to hold over, and it was not until the 15th Bhadra 1306 B. S. that notices were given to him on behalf of the Bhookailash estate to quit at the end of the same month, namely, 31st Bhadra 1306 B. S.

The defendants in each of these cases were alleged to have been served with notices to quit by the plaintiff, as they were sub-lessees holding under the plaintiff and occupying the land leased to him, and the suits were instituted on the 25th November, 1899, that is Aghran 1306 B. S., for ejectment on such notices.

The defendants resisted the suits on various grounds. They claimed the service of notices upon them, and they further said that the plaintiff's tenancy [125] had been terminated by the notices served upon him on the 15th Bhadra, B. S and that in consequence the relationship of landlord and tenant between them and the plaintiff had been terminated on the 31st of that month.

The plaintiff also sought in his plaint to recover arrears of rent up to the month of Ashin and damages for the subsequent period on the basis of the notices that he had served upon the defendants.

The Munsif who tried these cases came to the conclusion that the notices alleged to have been served upon the defendants at the instance of the plaintiff had not been actually served, and that the plaintiff's tenancy under the Bhookailash estate had not been terminated by the notices as alleged by the defendants, and in the view he took he came to the conclusion that the plaintiff was not entitled to decree for ejectment nor was he entitled to damages, but he was entitled to the rents as claimed in the plaints up to Assin.

There were appeals to the Additional District Judge of the 24-Pergannahs, and he held that the notices served on behalf of the Bhookailash estate on the plaintiff were legal and were sufficient to terminate his tenancy. He therefore set aside the decrees passed by the Munsif and directed practically that the suits should be dismissed.

The main ground upon which the learned Judge has held that the notice served on behalf of Bhookailash estate on the plaintiff was legal is that under section 116 of the Transfer of Property Act the plaintiff was entitled to hold as tenant from month to month, and that under section 106 of that Act he was entitled to only 15 days' notice to quit.

The ground of appeal before me is that the view of the learned Judge is erroneous, and that it should be held that after the determination of the plaintiff by efflux of time the holding over entitled him to hold from year to year on the terms of the tenancy except the term as to the number of years.

I think this contention is right. The law on the subject is thus laid down in Woodfall on the Law of Landlord and Tenant, 17th Edition, p. 246: "Where a tenant for a term of years holds over after the expiration of his lease he becomes a tenant on sufferance, but when he pays or expressly agrees to pay any subsequent rent at the previous rate, a new tenancy upon year to year is thereby created upon the same terms and conditions as those contained in the expired lease so far as the same is applicable to and not inconsistent with the yearly tenancy." Further on the learned author says: "In the absence however of any evidence one way or the other, it seems that upon the holding over and payment of rent the Jury would be directed to find a tenancy on the terms of the expired lease, and that this would be so even if there had been an assignment and of the reversion prior to the holding over. Any such new tenancy (when implied) will be deemed to have commenced at the same time of the year as the original term, and notice to quit should be given accordingly."

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The law as laid down in the passages quoted by me has been accepted as applicable to this country. In the case of *Sayajibin Habaji Bhadvalkar* v. *Umajibin Sadoji Ravut* (1), Sir Richard Couch in delivering judgment in [126] the Court said: "Where, on the expiration of a lease, the lessee is allowed to continue in possession as a yearly tenant, he does so on the terms contained in the expired lease, so far as they are consistent with a yearly holding.

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The learned vakil for the respondent has contended that whatever the law in England on the subject may be, and the law in this country might be before the Transfer of Property Act came into operation, sections 106 and 116 of that Act have made an alteration. He argues that the two sections (106 and 116) must be read together, and inasmuch as in the latter section the words used as to the effect of holding over are that the lease is, in the absence of an agreement to the contrary, renewed from year to year according to the purpose for which the property is leased as specified in section 106, the tenancy in the present case being for purposes other than agricultural or manufacturing, the plaintiff holding over was only entitled to remain on the land as tenant from month to month, unless there was an agreement to the contrary.

I do not think that this contention is supportable on the authorities to which I have already referred, and I do not think the Legislature intended to modify the rule laid down in them. We must read the words "in the absence of any agreement to the contrary" as referring either to an implied or to an express agreement; and if the fact be that the original tenancy was a tenancy from year to year and if there be no other evidence one way or the other, it is to be presumed that the tenancy by holding over commenced at the same time of the year as the original term and would last for a year, and notice to quit should be given accordingly.

Section 116 is prefaced by the words "in the absence of an agreement to the contrary," and similarly we have in section 106 words which are almost the same, namely, "in the absence of a contract to the contrary.

In *Keshori Mohun Roy Chowdhry* v. *Nund Kumar Ghosal* (2), *Hemangani Chowdhrani* v. *Srigobinda Chowdhry* (3), and *Durga Mohan Das* v. *Rakhal Chandra Roy* (4), it has been held every contract should be construed according to its own terms, and the fact that the tenancy in any particular case is from year to year should be the regulating principle as to the notice to quit. No doubt these cases do not refer to the tenants holding over, but I think the same principle should apply.

I therefore think the decision of the learned Judge is erroneous. The plaintiff in each of these cases is entitled to say to his landlord and therefore to his sub-tenant, that he has the right to hold on until there are proper notices to quit, and I find notices given on behalf of the Bookailash estate were illegal.

For these reasons I decree these appeals, and restore the decree of the Court of first instance.

The defendant appealed against this judgment, under s. 15 of the Letters Patent, on the grounds, (*i*) that the notice served on behalf of the Bhookailash estate on the plaintiff was sufficient and that it determined his tenancy; and (*ii*) that this Court should [127] have held that the tenancy of the plaintiff was "from month to month, it having been determined by the notice served on him by the superior landlord.

Babu *Shib Chandra Palit*, for the appellant.

Babu *Surendra Mohan Das*, for the respondent.

MACLEAN, C. J. The plaintiff was the lessee of certain immovable property for the term of three years. The property leased was not leased for agricultural or manufacturing purposes. The case admittedly falls within the Transfer of Property Act. The lease for three years determined, and the plaintiff held over for some years after the date of the termination of the tenancy. The question is on what terms he held over.

The person sued in this case is the plaintiff's sub-tenant whose defence is that, at the date of the suit, the plaintiff's interest in the property had determined. That depends upon whether or not the notice given by the

(1) (1886) 3 Bom. H. C. (A. C.) 27.
(2) (1897) I. L. R. 24 Cal. 720.
(3) (1901) I. L. R. 29 Cal. 203.
(4) (1901) 5 C. W. N. 801.

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superior landlord to the plaintiff was a sufficient notice to terminate the tenancy—a question which is again dependent upon that of the terms upon which the property was held over by the plaintiff. It seems to me immaterial to consider what the English law may be on the subject. We have to consider what the law in India is. That law has been codified and is to be found in section 116 of the Transfer of Property Act. What does the language of that section mean? It does not appear to me to present any serious difficulty in construction. The material words are: "if a lessee remains in possession thereof after the determination of the lease . . . . . and the lessor accepts rent from the lessee," which was the case here, "the lease is, in the absence of an agreement to the contrary," which must mean an agreement as to the terms of the holding over, "renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in section 106." That takes us back to section 106. I have already pointed out that the property here was not leased for agricultural or manufacturing purposes and, therefore, it was a lease of immoveable property for a purpose other than agricultural **[128]** or manufacturing purposes, and under section 106 it must be deemed to be a lease from month to month terminable on the part of either lessor or lessee by 15 days' notice, expiring with the end of a month of the tenancy. Such a notice was in the present case admittedly given by the superior landlord to the plaintiff. Reverting then to section 116, it seems reasonably clear that the lease must be regarded as "Renewed from month to month," as the purpose for which the property was leased was neither agricultural nor manufacturing. This view is supported by Illustration (*a*) to the section. That being so, the notice given to the plaintiff by the superior landlord was sufficient in law, and consequently at the date of the institution of the suit, the plaintiff had no interest in the property. His suit, therefore, must fail and be dismissed with costs in all the Courts.

This judgment will apply to appeal No. 21 in which also the plaintiff's suit must be dismissed with costs in all Courts.

BODILLY AND MOOKERJEE JJ. concurred.

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32 C. 129 (=31 I. A. 203=6 Bom. L. R. 765=8 C. W. N. 809=1 A. L.J. 585= 8 Sar. 618.)

[129] PRIVY COUNCIL.

JAGADINDRA NATH ROY *v.* HEMANTA KUMARI DEBI.*

[*On appeal from the High Court at Fort William in Bengal.*]

[29, 30th June and 29th July 1904.]

***Limitation—Endowment—Limitation Act** (XV of 1877), s. 7, Sch. II, Art. 149—Cause of action—Minor Sebait—Suit on attaining majority—Idol, position of—Complete and incomplete Dedications—Right of Sebait to sue with respect to endowed property—Succession or management of endowed property—Suit by guardian during minority, Right of—Suit by Lessee under Government.*

In a suit to recover possession of land it was found by both the Courts below that the dispossession, on which the cause of action was based, had taken place during the minority of the plaintiff, and that the suit had been brought within three years of his attaining majority :

Held, **(reversing the decision of the High Court) that the plaintiff was not**

* *Present* : LORD DAVEY, LORD ROBERTSON, AND SIR ARTHUR WILSON.