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does say that it was he himself who beat the deceased to death, the statement is mainly occupied with what Udoy Tara did and is so framed as to throw the real blame on her. The statement is not corroborated in any way. Nothing was discovered or brought to light in consequence of it, and it was retracted on the next occasion on which Jagat Chandra was placed before the Magistrate.

Under these circumstances, we feel that we cannot safely act upon this confession, and there being no other evidence upon which Jagat Chandra could be convicted, we have no alternative but to reverse the finding of the Sessions Judge and to acquit him.

We, accordingly, reverse the conviction of both the appellants. We acquit Jagat Chandra, and we direct that both the accused be released.

H. T. H. *Conviction set aside.*

APPELLATE CIVIL.

Before Mr. Justice Trevelyan and Mr. Justice Ameer Ali.

PERSHAD SINGH AND OTHERS (PLAINTIFFS) *v.* RAM PERTAB ROY (DEFENDANT.)*

1894 *Sept.* 11.

Bengal Tenancy Act (VIII of 1885), section 155—Suit for ejectment—Notice, Sufficiency of—Omission from notice of requisition on tenant to pay compensation—Alternative relief.

The words of section 155 of the Bengal Tenancy Act "and in *any* case to pay reasonable compensation," &c., mean in *every* case; and a notice not containing a requisition to the tenant to pay such compensation is insufficient to support a suit for ejectment brought under that section.

Where the suit was for ejectment from certain land, but the plaint contained other prayers, namely, for a declaration that the defendant had no right to build houses on the land, and for an injunction on him to remove houses he had built thereon, and the suit for ejectment failed from the insufficiency of the notice under section 155, the Court held, that the plaintiff was not entitled to a declaration or injunction as asked for.

* Appeal from Appellate Decree No. 2297 of 1893, against the decree of Babu Amirto Lal Chatterjee, Subordinate Judge of Tirhoot, dated the 30th of September 1893, affirming the decree of Babu Krishna Nath Roy, Munsif of Hajipur, dated the 12th of September 1891.

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THIS was a suit for ejectment of a tenant after notice under section 155 of the Bengal Tenancy Act. The facts were stated as follows in the judgment of the Munsif :—

"The plaintiff Raja Pershad Singh is proprietor, and the other plaintiffs his lessees, of the partitioned share of *mouza* Bhagwanpur in which the land in dispute is situate. The defendant Ram Pertab Roy is the admitted tenant of the land. Raja Pershad says the tenant's right is one of occupancy, and none other than that of holding and cultivating the land in question, and the tenant has no right to use it for building purposes. He complains that the defendant has been since 1295 (1888) using it by building houses, and letting them on rent, and has thereby rendered the land unfit for the purposes of cultivation for which it was originally let to the defendant and himself.

"In order to sustain a suit for ejectment, the plaintiff states that under section 155 of the Tenancy Act he caused a notice to be served on the defendant, Ram Pertab Roy, specifying in it that the defendant should remove within one month from the date of service the houses he has built in contravention of the purpose for which the land was let ; that the notice was served on the 14th January 1891, and the defendant has not removed them. He therefore states that his cause of action has arisen from the 15th February 1891, *i.e.*, the date following the day on which the one month's time expired.

"Upon these statements of fact the plaintiff asks the following relief :—

"(*a*) That it be declared that the defendant has no right to build houses on the land in question, and to let them stand thereon ;

"(*b*) That on determining the first prayer in the plaintiffs' favour the defendant be directed, within a time fixed by the Court, to remove the houses, and reduce the land to its former condition ;

"(*c*) That if the defendant do not remove the houses he be ejected from the land ;

"(*d*) That the plaintiff be adjudged costs of the suit."

Six issues were raised on which the Munsif held that the suit was not barred by limitation ; that the notice was duly served, but was defective in not asking for compensation, and therefore not sufficient to support the action, and was moreover not served by the landlord, but by the proprietor ; that the houses which it was sought to remove were built at the time (1295) as stated by the plaintiff, and not nine years before suit, as stated by the defendant ; that the defendant was not holding at fixed rates, and had not the right to use the land as he pleased ; that the tenancy was one for agricultural, and not for building purposes, but that

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the defendant's use of it had not deteriorated, but rather improved, the holding. On his decision on the second issue he held that the suit must be dismissed.

On appeal the Subordinate Judge said :—

"The notice so given did not require the tenant to pay compensation for the misuse or breach complained of, nor did the plaintiffs in the present suit ask compensation from the defendant for the misuse or breach complained of. The first Court has dismissed the suit on the following grounds : *First*, that the notice is defective, because it does not require the tenant to pay compensation for the misuse or breach ; *second*, that it is bad inasmuch as it was not served by the landlord, but by the proprietor. The plaintiffs who are the appellants before me contend that neither of the said grounds is sufficient.

"The question which I am now to try is whether the grounds relied upon by the first Court are enough to warrant the Court in dismissing the suit."

The Subordinate Judge then went on to hold that, though he was of opinion that the plaintiff was a "landlord" for the purpose of serving the notice, yet the notice was defective under section 155 of the Tenancy Act in not asking for compensation, and that the suit must therefore be dismissed. He did not touch on any of the other issues in the case.

From this decision the plaintiffs appealed on the grounds that the notice was sufficient under section 155, and that at any rate the suit ought not to have been entirely dismissed, but that the Courts should have given the plaintiffs such relief and declarations as they were entitled to on the findings in the case.

Mr. *Jackson*, Dr. *Rash Behari Ghose*, and Babu *Uma Kali Mukerjee*, for the appellants.

Moulvi *Mahomed Yusoof*, for the respondent.

The following judgments were delivered by the Court (TREVELYAN and AMEER ALI, JJ.)

TREVELYAN, J.—In this case the suit was brought by a landlord against his tenant praying (*a*) that it may be declared that the defendant had no right to build houses ; (*b*) upon determination of the above prayer, the defendant may be ordered to remove the houses within a fixed time and reduce the land to its former condition ; (*c*) if the defendant fail to remove the houses within the fixed time, he may be ejected from the land and *khas* possession awarded to plaintiff. The first question that was tried by the

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learned Munsif was as to whether the plaintiff had complied with the provisions of section 155 of the Bengal Tenancy Act, and had given the notice therein provided for. He came to the conclusion that the notice was defective on the ground that the plaintiff did not therein ask for compensation for the breach. He also considered that on other grounds it was defective. There were raised before him, besides the first issue which refers to limitation, a question which does not arise here, a second issue as to notice. The following was the third issue, namely : "Were the houses asked to be removed built in Magh 1295 and Chait 1297 as stated in the plaint, or nine years ago as stated by the defendant?" That issue he decides in favour of the plaintiff. The next issue is the fourth issue : "Is the defendant's holding *mourasi*, *i.e.*, at fixed rates? If so, has he a right to use the land in any way he pleases?" That issue he decided also in favour of the plaintiff. The next issue is : "For what purpose was the land first granted to the defendant? Is the building of the *ghur* detrimental to the object for which the lease was first granted? Is the value of the holding deteriorated by these buildings?" He comes to the conclusion on that issue that, instead of the defendant having caused the value of the holding to deteriorate he has, as a matter of fact, improved it. He declines therefore to give the plaintiff any relief. There was an appeal by the plaintiff to the Subordinate Judge, who only deals with the question arising under the Bengal Tenancy Act and on the question as to the omission of a demand for compensation in the notice, the Subordinate Judge agrees with the view taken by the Munsif. He does not agree with him as to the other questions regarding the notice which it is not necessary for us to consider now. He says nothing about any other question. It does not appear before us whether or not any other question was argued before him.

The first and most important question which has been argued before us arises under section 155 of the Bengal Tenancy Act. That section provides : "(1) a suit for the ejectment of a tenant on the ground—(*a*) that he has used the land in a manner which renders it unfit for the purposes of the tenancy ; or (*b*) that he has broken a condition on breach of which he is, under the terms of the contract between him and the landlord

the defendant's use of it had not deteriorated, but rather improved, the holding. On his decision on the second issue he held that the suit must be dismissed.

On appeal the Subordinate Judge said :—

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"The question which I am now to try is whether the grounds relied upon by the first Court are enough to warrant the Court in dismissing the suit."

The Subordinate Judge then went on to hold that, though he was of opinion that the plaintiff was a "landlord" for the purpose of serving the notice, yet the notice was defective under section 155 of the Tenancy Act in not asking for compensation, and that the suit must therefore be dismissed. He did not touch on any of the other issues in the case.

From this decision the plaintiffs appealed on the grounds that the notice was sufficient under section 155, and that at any rate the suit ought not to have been entirely dismissed, but that the Courts should have given the plaintiffs such relief and declarations as they were entitled to on the findings in the case.

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liable to ejectment—shall not be entertained unless the landlord has served, in the prescribed manner, a notice on the tenant specifying the particular misuse or breach complained of, and where the misuse or breach is capable of remedy requiring the tenant to remedy the same, and in any case to pay reasonable compensation for the misuse or breach, and the tenant has failed to comply within a reasonable time with that request." The question really turns upon the meaning of the words "and in any case;" if that means in any case whatever, it follows that there being statutory prohibition unless the notice exactly complies with the statute the Judge would be right. The argument of learned Counsel comes to this that, if it was a case where no compensation could possibly be ascertained, it would be unreasonable to expect the landlord to give notice with regard to it. He says that in this particular case, with regard to what was alleged to have been done, it was impossible to ascertain the damages. Of course that argument would be very difficult to accept, if the Legislature meant *every* case, because we are bound to follow the Act. In support of this contention, our attention has been called to an English statute from which the first portion of section 155 has been taken, namely, section 14 of the Conveyancing and Law of Property Act of 1881. The words of the first portion of that section are practically the same as those of the first portion of section 155, but the latter portion of section 14 of the English statute is wholly different, and is intended for an entirely different purpose from the latter portion of section 155, which provides for the nature of the decree. I have always thought it a great advantage where one can find an English statute resembling in its purpose and phraseology the Indian statute under discussion to get the assistance offered by the decisions of the Courts in England, but of course it is always necessary to see that these statutes are really resembling one another in their purposes and not only have an accidental resemblance in a portion of the section, which for convenience of drafting has been adopted by the draftsman of the Indian Act. There were cited before us cases which support the view taken by the learned Counsel, and there is no doubt that the case in the Court of appeal is distinctly in his favour, but here we find a difficulty in applying that case, because the first portion of section

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155 is directly controlled by the second portion of it, and we do not think that it is possible to give any reason for this distinction better than that in the remarkably able judgment given by the learned Munsif. He there points out, after going into the matter, that if there should be no loss to the landlord, there should be no ejectment or claim for compensation, and if, as a matter of fact, the landlord does not lose any money by this use of the land apart from the removing of the property, the result would be that there would be no ejectment. However that may be, there are the words of the Act. Whether it be difficult or easy to follow it in the notice, we think it clear that the omission of a demand for compensation in the notice prevents this suit being entertained. So much for section 155. It is also argued that even if an action for ejectment does not lie, the plaintiff is entitled to an injunction. There is no doubt that this suit is framed as really a suit for ejectment; the earlier portions of the prayer to which I have referred are merely ancillary to the question of ejectment, and on this question of notice the case has been argued. It does not appear that in the Subordinate Judge's Court anything else was suggested, and in the Court of the Munsif, who has tried all the issues, it does not appear that he was asked to give an injunction. It is necessary to see what the suit really is. It was a suit for ejectment and in that the plaintiff has failed. The appeal is dismissed with costs.

AMEER ALI, J.—This was a suit between a landlord and a tenant. There is no question that the defendant is an occupancy ryot holding lands within the zemindary of the plaintiff. The plaintiff's case is that the defendant has constructed upon his holding certain buildings which have rendered the land held by him unfit for cultivation. That is set out in para. 5 of the plaint. The plaintiff states further in para. 6 that on the 14th of January 1891 he served, under section 155 of the Bengal Tenancy Act, a notice requiring the defendant to remove the houses and bring the land to its original state within one month from the date of service thereof, failing which a suit would, on the expiration of the time mentioned, be brought by the plaintiff to cancel the defendant's tenancy, and to eject him from his land. The first Court held that the notice did not comply with the requirements of section 155,

which was a condition precedent to the institution of any suit under that section, and accordingly dismissed the plaintiff's action. The Subordinate Judge on appeal expressed himself thus:— 1894

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"The first Court has dismissed the suit on the following grounds:—

"*First.*—That the notice is defective, because it does not require the tenant to pay compensation for the misuse or breach.

"*Second.*—That it is bad inasmuch as it was not served by the landlord, but by the proprietor.

"The plaintiffs, who are the appellants before me, contend that neither of the said grounds is sufficient.

"The question which I am now to try is whether the grounds relied upon by the first Court are enough to warrant the Court in dismissing the suit?"

It is clear, therefore, that there were two points dealt with by the Subordinate Judge in his judgment—(*i*) whether the notice upon which the suit was founded was materially defective; and (*ii*), whether the view of the Munsif that the notice was not by the landlord was correct. The Subordinate Judge does not seem to have been called upon to enter into any other question. He held that it was indispensable under section 155 of the Bengal Tenancy Act that the notice should contain the demand for compensation, and as compensation was not asked for the suit was bad; on the second point he thought the view of the Munsif was not correct. He held so far in favour of the plaintiffs, but on the other ground he dismissed the appeal with costs.

In appeal two questions have been raised—one that the notice was sufficient. That has been dealt with by my learned co[illegible], and I shall not deal with it in detail. The other point urge[illegible] that even if the plaintiff was not entitled to eject the defend[illegible] was entitled to a declaration that the defendant had no rig[illegible]uild houses and to let them stand in the terms of prayer (*a*) [illegible]e plaint, and that further he was entitled to an injunction [illegible]rdance with prayer (*b*). Now, as I understand section 15[illegible]o Tenancy Act, it seems to me to be exhaustive

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in itself. The section may be divided into three parts. The first part of the section deals with two classes of cases, *viz.*, a case where the tenant is using the land in such a manner as to render it unfit for the purposes of the tenancy. Secondly, the case of a tenant committing a breach of the terms of the contract between him and the landlord, which renders him liable to ejectment. The plaintiffs' suit is not founded on clause (*b*) of the section; his suit is based upon clause (*a*), that is, that in consequence of his building these structures he has rendered the land unfit for the purposes of the tenancy, and that is what is set forth in para. 9 of the plaint. Then the section describes how the landlord should proceed, in order either to have the lands brought back into the original condition in which they were, or to get relief for the breach of the conditions of the contract; it prescribes that he should serve a notice on the tenant, specifying the precise and particular misuse of the land under clause (*a*), or of the breach under clause (*b*), and if these two acts are capable of being remedied, requiring him to remedy the same, and in any case asking him to pay reasonable compensation for either of these acts under clause (*a*) or clause (*b*). Then the section goes on to provide that if the tenant fails to comply with that demand within a reasonable time, namely, with the requisition asking him to remedy the breach or to pay compensation, the landlord would be entitled to bring a suit, the procedure for which is laid down further in sub-sections 2, 3 and 4. Upon such a suit being brought if the conditions precedent have been complied with, the Court has the power to make a decree in the following way, namely, it may make a decree declaring the amount of compensation reasonably payable to the landlord, and declaring whether in the opinion of the Court the misuse or b[illegible] the plaint. being remedied. If it is capable of being re[illegible]th of January to declare and direct that the defendant should [illegible]enancy Act, In the other case the landlord would be entitled [illegible]ses and bring sation. Sub-section 4 further provides that, [illegible] the date of within the period or extended period (as the case [illegible]piration of the the Court under this section, pays the compensa[illegible]he defendant's the decree, and where the misuse or breach [illegible]ourt held that Court to be capable of remedy, remedies the mis[illegible]f section 155,

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satisfaction of the Court, the decree shall not be executed." The result, therefore, is that if the tenant pays the compensation for which he has been declared liable he cannot be ejected; if the misuse or breach is capable of being remedied, and he does not comply with the injunction of the Court to remedy it, he is liable to be ejected, and if he fails to pay the compensation awarded he is of course liable also to ejectment; but where he pays the compensation, or where the act is capable of being remedied, and he has remedied it, there is no ejectment. It seems to me, looking at the scope of the section and the character of the Tenancy Act which covers all disputes between landlords and tenants, that any action of the landlord must proceed under and be governed by the rules laid down by the Legislature in the Tenancy Act, but, as already pointed out, it is not necessary to go into these questions, because the case of the plaintiff was really one for ejectment; he gave a notice for ejectment and asked for ejectment; and, although there were other prayers in the plaint, they were merely ancillary to the prayer for ejectment. I quite agree with the view that a demand in the notice for compensation was necessary. English cases on the construction of English Statutes are of great assistance, sometimes in construing acts of the Indian Legislature where the Statutes are in *pari materia*, but excepting a verbal similarity between a portion of section 155 of the Tenancy Act and a portion of section 14 of the English Statute, which was referred to in argument, they do not seem to me to run on parallel lines. I agree, therefore, in dismissing the special appeal with costs.

J. V. W. *Appeal dismissed.*

PRIVY COUNCIL.

PRIT KOER (PLAINTIFF) *v.* MAHADEO PERSHAD SINGH AND OTHERS (DEFENDANTS.)

P.C.* 1894 *June* 14. *July* 14.

[On appeal from the High Court at Calcutta.]

Onus of proof—Hindu law—Joint family—Evidence as to the continuance of the joint holding of property—Inheritance and survivorship under the Mitakshara Law.

* *Present*: LORDS HOBHOUSE, MACNAGHTEN and MORRIS, and SIR R. COUCH.