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judgment-debtor continued in possession, his possession became that of a trespasser from that date, and gave the execution-purchaser a fresh cause of action, a suit upon which should be governed by article 144 of schedule II of the Limitation Act. And reckoning the period of limitation from the date of delivery of symbolical possession, this suit is quite in time.

S. C. G. *Appeal allowed. Case remanded.*

Before Sir Francis William Maclean, Knight, Chief Justice, and Mr. Justice Banerjee.

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KISHORI MOHUN ROY CHOWDHRY AND OTHERS (PLAINTIFFS) *v.* NUND KUMAR GHOSAL AND OTHERS (DEFENDANTS.)*

Landlord and tenant—Notice to quit—Suit for ejectment—Tenancy reserving an annual rent—What notice a raiyat holding an annual tenancy is entitled to.

In a tenancy created by a *kabuliyat* with an annual rent reserved, the tenant is entitled to six months' notice expiring at the end of a year of the tenancy before he can be ejected.

THIS appeal arose out of an action brought by the plaintiffs' to obtain *khas* possession of land by pulling down a *pucca poshta* and a *ghat* built by the defendants without the plaintiffs, consent and permission. The allegation of the plaintiffs was that the predecessor in title of the defendants took a settlement of the land by giving a registered *kabulyat* on the 14th Pous 1294 B. S., and since his death the defendants have been in possession of the said land as *karsa raiyats* or tenants-at-will; that the defendants without the knowledge and consent of the plaintiffs built *pucca* structures on the land, and having thus altered its condition, made themselves liable to be ejected; that a notice was served in the month of Joist last directing the defendants to demolish the *poshta* and the *ghat*, and to give up the land in the month of Assar last, and they having failed to do so, the present suit was brought. The defendants *inter alia* pleaded that there was no relationship of landlord and tenant, that there was no sufficient notice, that the *poshta* and the *ghat* were built openly and with the knowledge of the plaintiffs, and therefore the suit ought to fail.

* Appeal from Appellate Decree No. 998 of 1895, against the decree of S. J. Douglas, Esq., District Judge of Dacca, dated the 7th of March 1895, reversing the decree of P. N. Banerjee, Esq., Subordinate Judge of that district, dated the 31st of July 1893.

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The Court of first instance gave the plaintiffs a decree. On appeal, the learned District Judge dismissed the suit, holding that the notice to quit was not sufficient, and that the plaintiffs allowed the defendants to erect *pucca* buildings on the land without any objection. From this decision the plaintiffs appealed to the High Court.

Mr. *C. P. Hill*, Babu *Bussunt Coomar Bose* and Babu *Jogendra Chunder Ghose* for the appellants.

Mr. *Woodroffe* and Babu *Hari Mohun Chuckerbutty* for the respondents.

Mr. *Hill*— There is no provision for notice, except what is provided for in section 106 of the Transfer of Property Act. Where there is no contract, there is no provision for notice. This case does not come under section 106 of the Transfer of Property Act. Notice must be a reasonable one—see *Radha Gobind Koer* v. *Rakhal Das Mukherji* (1). The question is whether for the purpose of a shop-keeper's business two months' notice is a reasonable one. I submit it is. The defendants having denied the landlord's title no question of sufficiency of notice arises in this case. It is not a question of forfeiture, but the question is whether proof of notice is dispensed with, which otherwise it would have been incumbent upon the plaintiffs to prove. In such cases it is not necessary for the plaintiff to prove service of notice—see *Baba* v. *Vishvanath Joshi* (2), *Gopalrao Ganesh* v. *Kishor Kalidas* (3).

Mr. *Woodroffe* for the respondent.—The case does not come under section 106 of the Transfer of Property Act. The respondents are entitled to six months' notice terminable at the end of the year—see the case of *Rajendro Nath Mookhopadhya* v. *Bassider Rahman* (4).

Mr. *C. P. Hill* in reply.

The following judgments were delivered by the High Court (MACLEAN, C. J., and BANERJEE, J.) :—

MACLEAN, C. J.—There have been two or three points argued

(1) I. L. R., 12 Calc., 82 (89). (2) I. L. R., 8 Bom., 228.
(3) I. L. R., 9 Bom., 527.
(4) I. L. R., 2 Calc., 146 ; 25 W. R., 329.

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in this appeal, but the principal one is whether the plaintiffs are entitled to eject the defendants from certain land held by the latter under the *kabuliyat* set out at pages 25 and 26 of the paper-book. That question depends again upon whether adequate notice to quit was given by the plaintiffs to the defendants. All we have to decide, and all we intend to decide, is whether the notice was a good and sufficient notice so as to entitle the plaintiffs to recover possession of the property in question from the defendants. I do not propose to repeat the history and the facts of the case which are set out very fully in the judgment of the Court below, nor is it necessary, for the point is a very short one. It appears from the lease that the defendants became lessees of this property, for which they were to pay an annual rent of Rs. 5 by four instalments and take annual *dakhilas* for the same.

The first question is, what was the nature of the tenancy created by that document. In my opinion it was a tenancy reserving an annual rent. We do not decide whether the tenancy was or was not a permanent one. I say that because it has been suggested there may hereafter be a question as to that, and possible litigation in respect of it. Taking it then to be a tenancy with an annual rent reserved, in other words an annual tenancy (but not using that term so as to prejudice any question hereafter as to whether or not it is a permanent tenure), the question is whether the notice to quit was good and sufficient.

The defendants contend that they were entitled to six months' notice. Six months' notice admittedly was not given in this case.

In considering this question both Mr. Hill and Mr. Woodroffe agree that section 106 of the Transfer of Property Act has no application to the case. That being so, what in a tenancy of this nature is a reasonable notice to which the tenant is entitled before he can be ejected? It is conceded by Mr. Hill that according to English law in the case of a similar tenancy there must be six months' notice expiring at the end of the year of the tenancy. Apparently there is no direct authority upon the point in the Indian Courts, though Mr. Woodroffe relied upon the case of

Rajendronath Mookhopadhya v. *Bassider Ruhman* (1). But, as pointed out by Mr. Hill, that case really does not cover the present case. It only lays down this: "That a *raiyat* whose tenancy can only be determined by a reasonable notice to quit, expiring at the end of the year, can claim to have a suit for ejectment brought against him by his landlord dismissed on the ground that he has received no such notice." There being no authority to the contrary in this country we see no reason, nor has any reason been suggested, why the rule of English law should not be applicable to such a tenancy as the present in this country, and we think that six months' notice, terminating at the end of the year of the tenancy is the notice to which a tenant, under such a tenancy as that in this case is entitled. Though the case does not come within section 106 of the Transfer of Property Act, our view is consistent with the principle of that section in regard to tenancies in which a yearly rent is reserved.

In this case six months' notice not having been given the suit fails.

As we have intimated in the course of the argument, we do not think that we ought to allow the appellant to go into the question not raised in either of the Courts below, *viz.*, whether the defendants having denied the plaintiffs' title, if in their written statement they did in fact deny it, which Mr. Woodroffe does not admit, the plaintiffs were bound to prove any notice to quit. That question is not now before us.

One other point—a subsidiary point—remains, and it is this: It is contended on behalf of the appellants that the plaintiffs are entitled to re-enter now, by reason of the fact that the defendants without their lessor's consent, have erected certain structures upon the land of a permanent nature, and he calls in aid sub-section "*B*" of section 108 of the Transfer of Property Act, but as pointed out by Mr. Woodroffe that section only applies in the absence of a contract to the contrary. But even if that were not so, on the face of the finding of the lower Appellate Court, that the plaintiffs acquiesced in the erection of these structures, I do not think that that contention can successfully be raised. It was but faintly argued before us. Upon this point it may be

(1) I. L. R., 2 Calc., 146.

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mentioned that there is no condition of re-entry in the lease for breach of any covenant in it.

On these grounds I am of opinion that the appeal fails, and must be dismissed with costs.

BANERJEE, J.—I also am of opinion that this appeal and plaintiffs' suit should be dismissed, and dismissed upon the sole ground that there has not been any notice to quit such as, upon any view of the case, was necessary. The tenancy was created by a *kabuliyat*, that is by an express contract, and it was admitted on both sides that the case was outside the scope of section 106 of the Transfer of Property Act. Proceeding upon that assumption, and without determining, as it is unnecessary to determine, what the exact nature of the tenancy is, I think it must be at least held that the tenancy was one reserving a yearly rent, and the year of the tenancy commenced on the 14th day of Pous 1294.

Assuming that the tenancy is at all terminable by a notice to quit, the question is what ought the nature of the notice to be; and I think that the notice in such a case ought at least to be a six months' notice expiring with the year of the tenancy. Although section 106 may not apply to the case, it shows that the Legislature in this country has not thought fit to depart from the rule of English law that a yearly tenancy can only be terminated by a six months' notice. Moreover, the rule that requires that a terminable tenancy from year to year should have as a condition for its determination a notice expiring with the year of the tenancy, is a rule that is founded upon a very good reason. It prevents dispute as to the apportionment of the rent.

For these reasons I think that the notice, if the tenancy is at all terminable by a notice to quit, ought to be a six months' notice expiring with the end of a year of the tenancy.

As the notice here does not satisfy this condition, the suit, I think, has been rightly dismissed.

S. C. G. *Appeal dismissed.*