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for a term, to pay interest at a certain rate, may, if made before the passing of the Act, bind him so long as he continues to hold, but it does not attach to the land, when the term has expired, and the holding by the act of the landlord passes into other hands; and if the landlord, after the expiry of the term, put up the holding to sale under the Act, he puts it up subject to the express provisions of the Act in connection with it.

The case of *Ishan Chunder Chowdhry v. Chunder Kant Roy* (1895) is, we think, quite distinguishable. That was a case for a *putni* tenure, which is a permanent and a well known description of a *putni* tenure, and the purchaser was held to be bound by the terms of the *putni* agreement so far at all events as they were consistent with the nature of a *putni* tenure.

The defendant is only liable to pay interest at the rate specified in section 67 of the Tenancy Act. The decision of the Subordinate Judge is set aside, and the case must be sent back to him in order that he may determine what that interest is according to the instalments stated in the plaint, and make a decree accordingly.

The appellant will get his costs of this appeal.

H. W.

Appeal allowed.

Before Mr. Justice Trevelyan and Mr. Justice Beverley.

BHEKA SINGH (PLAINTIFF) v. NAKCHHED SINGH AND ANOTHER
(DEFENDANTS).*

Bengal Tenancy Act (VIII of 1885), Schedule III, Article 3—

Limitation—Suit by occupancy-raiyat for possession.

Article 3 of Schedule III of the Bengal Tenancy Act (VIII of 1885), prescribing a limitation of two years, is not restricted to suits against the landlord alone; it applies to a suit brought against a tenant with whom the land was settled by the landlord.

Ramjane Bibee v. Amoo Beparee (2) and *Chunder Kishore Dey v. Rajkishore Mozumdar* (3) distinguished.

* Appeal from Appellate Decree No. 822 of 1895, against the decree of Moulvie K. S. Fokhruddin Hossain, Subordinate Judge of Patna, dated the 6th of March 1895, affirming the decree of Babu Bhawa Charan Mukerjee Munsiff of that district, dated the 17th of February 1893.

(1) 13 C. L. R., 55.

(2) I. L. R., 15 Calc., 317.

(3) I. L. R., 15 Calc., 450.

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THIS suit was brought on the allegation that the land claimed was a part of the plaintiff's ancestral *kasht* in a village in the district of Monghyr ; that in 1885 the land was included in Jazira Dumra in the district of Patna under orders of the Revenue authorities ; that after the death of the plaintiff's father, the officers of Government refused to register his name as tenant, set up defendants Nos. 2 and 3 as tenants on the land, and caused the crops to be attached in 1297 and 1298 *Fasli* (1889 and 1890) ; that the plaintiff sent a notice to the Collector of Patna asking for registration of his name but to no purpose, and that the term fixed in the notice expired on the 3rd December 1890. The plaintiff accordingly brought this suit on the 29th January 1892 praying for recovery of possession and mesne profits upon declaration of his occupancy right. The Secretary of State for India was made defendant No. 1 in the suit ; but it was stated on his behalf that he had no objection to the registration of plaintiff's name and to the Court's awarding possession to the plaintiff if the Court considered it proper to do so. The other defendants contested the claim and raised the plea of limitation.

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The first Court found that the plaintiff had a right of occupancy, but that he was dispossessed by the acts of the servants of defendant No. 1 more than two years before the institution of this suit ; and held that the suit was barred under Article 3 of Schedule III of the Bengal Tenancy Act.

The plaintiff preferred an appeal, but the appeal was dismissed on the ground that the Secretary of State, who was defendant in the first Court, was not made respondent in the appeal.

On a second appeal, the High Court (TREVELYAN and AMEER C. J.J.) observed : " In the first Court the Secretary of State had no direct interest in the subject-matter of the suit and stated himself to be perfectly indifferent to him whether the plaintiff or defendant in the case established their title to the land. He was, so, there was no decree against him, and the appellant cannot think, in not making him party to the appeal in the first Court. " As he is not a necessary party to the appeal the High Court ought to have tried the appeal. We therefore direct the appeal to go back, so that all matters in question in the appeal may be decided by the learned Judge."

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After remand, the Subordinate Judge of Patna tried the appeal and held that the suit was barred by limitation as the plaintiff failed to bring it within two years from the date of his dispossession.

The plaintiff appealed to the High Court.

Babu *Dwarka Nath Chakravarti* for the appellant.

Babu *Karuna Sindhu Mukerjee* for the respondents.

The judgment of the High Court (TREVELYAN and BEVERLEY, JJ.) was as follows :—

This is an appeal from a decision on remand.

The suit was brought by the plaintiff, claiming to be an occupancy-raiyat, against the Secretary of State, who was his landlord, and also against a person who had been settled on the land by one of the officers of the Secretary of State. The Secretary of State put in an answer disclaiming any preference for the plaintiff or the defendant as his tenant.

The case came before the Munsif who found that the plaintiff had an occupancy-right, but he dismissed the suit on the ground that it was barred by limitation under Article 3, Schedule III, Part I of the Bengal Tenancy Act. The plaintiff appealed, not making the Secretary of State a party to the appeal ; as far as the decision against the Secretary of State as to the suit being barred by limitation is concerned, it was final, not having been excepted to by the appellant. The learned Subordinate Judge dismissed the appeal on the ground that the Secretary of State was not made a party to the appeal before him. A second appeal was preferred, and a Division Bench of this Court held that under the circumstances the Secretary of State was not a necessary party to the appeal, and therefore set aside the decree of the Subordinate Judge and directed him to try all questions on appeal. This has been done, and the Subordinate Judge has found that the suit, as it now stands as against the second defendant who was put in possession by the Secretary of State, is barred by limitation.

It is contended before us that Article 3 only applies to a suit against the landlord. In the first place this suit was brought against the landlord, and the High Court did not hold that the

landlord was not a necessary party to the suit. The suit was dismissed as against him on the ground that it was barred by limitation. But even if we could treat the suit at this stage of the case as not being a suit against the landlord, we are not prepared to say that the broad proposition contended for is correct. It is perfectly true that it has been held that this article is limited to suits where the ouster complained of has been caused by the landlord or by somebody acting in concert with him or at his instance. We are not aware of any decision (there is none reported) which limits the article against the landlord alone, and holds that it does not apply to a suit against a person holding under the landlord. The omission to add the landlord as a party defendant would not in our opinion extend the period of limitation from two to twelve years. It is the circumstance of the ouster, and the fact that a particular person has ousted the plaintiff, which give rise to the necessity of his proving his occupancy right as against that person and therefore make it necessary for him to sue to recover possession of the land claiming it to be held by him as an occupancy-raiyat.

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As far as we are aware, the effect of all the decisions and certainly of those cited to us to-day is not to restrict the article to suits against the landlord alone. The two cases referred to—*Ranjana Bibee v. Amoo Beparee* (1) and *Chunder Kishore Dey v. Rajkishore Mozundar* (2)—were cases brought against persons who were trespassers not claiming under the landlord. Here we have a case brought against a tenant with whom the land was settled by the landlord.

In our opinion, the judgment of the Subordinate Judge is right, and the appeal must be dismissed with costs.

S. C. C.

Appeal dismissed.

(1) I. L. R., 15 Calc., 317.

(2) I. L. R., 15 Calc., 450.