

The power to add parties must be exercised with reference to the interests which those parties have at the time when the addition is being considered. Mr. Bonnerjee contended that the Court could not add a plaintiff unless he had a right at the time of suit, or had derived a right from an original plaintiff. Even if this be a correct limitation to the powers of the section, we think that a conveyance from the real owner, whose *benamdar* is the plaintiff, must, for the purposes of this proposition, be treated as a conveyance from the plaintiff. We are by no means saying that the section is limited, as we are of opinion that it is wide enough to meet every case of defect of parties.

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Another question has been raised under section 131 of the transfer of Property Act, but it was not referred to in the lower Court or in the grounds of appeal to us. If it had been raised, it might have been the subject of an issue of fact.

In our opinion the appeal fails and must be dismissed with costs.

S. C. C.

*Appeal dismissed.*

*Before Mr. Justice Macpherson and Mr. Justice Hill.*

ALIM (DEFENDANT) v. SATIS CHANDRA CHATURDHURIN  
 (PLAINTIFF). \*

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*Bengal Tenancy Act (VIII of 1885), section 67 and section 178—Payment of Interest—Rate of interest specified in kabuliyat—Sale, for arrears of rent, of right of defaulting tenant who has held over—Purchaser of tenure, Rights of.*

IN execution of a decree for arrears of rent against a tenant whose term under a *kabuliyat* had expired but who had held over, the plaintiff put up the tenure for sale, and the defendant purchased it. The plaintiff afterwards sued the defendant for interest at the rate and according to the instalments specified in the *kabuliyat*.

*Held*, reversing the decision of the Subordinate Judge, that the defendant was liable only for interest at the rate specified in section 67 of the Bengal Tenancy Act.

Appeal from Appellate Decree No. 12 of 1895, against the decree of Bipradas Chatterjee, Subordinate Judge of Mymensingh, dated the 7th number 1894, reversing the decree of Babu Phani Bhushan Mukerjee, f Iswargungo, dated the 1st of December 1893.

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*Ishan Chunder Chowdhry v. Chunder Kant Roy* (1) distinguished.

ANU SARKAR held certain lands under a *kabuliyat* for a period of seven years from 1285 to 1291 (B.S.), (1878 to 1884). After the term expired, he held over without any further agreement. In Phalgun 1296 the plaintiff obtained a decree against him for arrears of rent; and in execution of that decree he put up the holding for sale, and it was purchased by the defendant. The plaintiff subsequently brought a suit against the defendant to recover arrears of rent for the years 1296 to 1299 (1889 to 1892) with interest at the rate of one anna in the rupee per mensem, as specified in the *kabuliyat*. The amount of interest so claimed exceeded the principal. The defendant pleaded that under the Tenancy Act no higher rate of interest than 12 per cent. per annum could be claimed. The Munsif made a decree in favour of the plaintiff for the rent due, with interest at 12 per cent. per annum.

The plaintiff appealed to the Subordinate Judge, who decreed the plaintiff's claim in full, with costs and interest at 6 per cent. per annum until realisation. The defendant appealed.

*Babu Grish Chunder Chowdhry* for the appellant.

*Dr. Rash Behari Ghose*, and *Babu Jogesh Chunder Roy*, for the respondent.

The judgment of the Court (MACPHERSON and HILL, JJ.), was as follows:—

This is a suit for arrears of rent for the years 1296 to 1299 according to certain specified instalments, and interest at the rate of 1 anna per rupee per mensem. The interest claimed is much in excess of the principal. It seems that the holding for which the rent is claimed formerly belonged to one Anu Sarkar, who held it under a registered *kabuliyat* for a term of 7 years, extending from 1285 to 1291. After the lease expired he held over without any further agreement. In February 1889 (Phalgun 1296) the plaintiff obtained a decree for arrears of rent against Anu Sarkar, and in execution of the decree the holding was sold and purchased by the defendant. The plaintiff in the present suit claimed interest at the rate and according to the

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

instalments specified in the *kabuliyat*. The defendant said the rent was payable in the instalments specified in section 53 of the Tenancy Act, and that the plaintiff could not recover a higher rate of interest than was allowed by section 67 of the same Act. The first Court decided both points in favour of the defendant. The Appellate Court reversed that decision and decided them in favour of the plaintiff. The only question raised in this appeal is as to the rate of interest. The holding when sold was either an occupancy or non-occupancy holding ; it does not appear, and for the purpose of the case it does not matter, which it was. Section 67 of the Tenancy Act provides that "an arrear of rent shall bear simple interest at the rate of 12 per centum per annum from the expiration of that quarter of the agricultural year in which the instalment falls due to the institution of the suit." Section 178 provides that nothing in any contract made between a landlord and a tenant after the passing of the Act shall "affect the provisions of section 67 relating to interest payable on arrears of rent." Neither landlord nor tenant could, therefore, after the passing of the Act in March 1885, contract himself out of the provisions of section 67.

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We will assume, in the absence of anything to denote the contrary, that the original holder while holding over held under all the terms of the *kabuliyat* which he had given. When, however, the landlord put up the holding to sale for its arrears, he must be taken to have put it up subject to all the ordinary incidents of such a holding. It was not an ordinary incident that interest or arrears should be payable at the very high rate claimed. On the contrary there was no such incident, and if the landlord had put up the holding subject to an express condition that the higher rate should be paid, the condition would not bind the purchaser in so far as it purported to create a new contract between himself and the landlord. If there was no such condition attached to the sale, the purchaser must be taken to have purchased subject to all the ordinary incidents of the holding. If there was such a condition, and it was for the respondent to show it, which he has not done, the condition was, we consider, contrary to the provisions of the Act and not binding on the purchaser. An agreement by a tenant of a holding

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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, puts 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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July 28.