APPELLATE CIVIL.

Before Mr. Justice Ghose and Mr. Justice Brett.

HEMANGINI CHOWDHRANI

v.

SRIGOBINDA CHOWDHURY.*

1901. *Nov.* 19 & 22.

Landlord and tenant—Notice to quit—Suit for ejectment—Whether suit itself is sufficient notice—Annual tenancy.

A raiyat, whose tenancy can only be determined by a reasonable notice to quit, expiring at the end of the year, is entitled to claim to have a suit for ejectment brought against him dismissed on the ground that he has received no such notice. A decree cannot be made in such a case entitling the plaintiff to eject the raiyat at the end of a year mentioned in the decree, subsequent to the date of the institution of the suit.

Ram Lal Patak v. *Dina Nath Patak* (1) not followed; *Rajendra Nath Mookhopadhya* v. *Bussider Ruhman Khondkhar* (2) followed.

THE defendants, Hemangini Chowdhrani and others, appealed to the High Court.

The plaintiff Srigobinda Chowdhury brought a suit for khas possession on ejectment of the defendants from the land in suit. The plaintiff alleged that the defendants paid rent in respect of the jote as marfatdars of the original tenant deceased, that they had no permanent right in the jote, and that the suit was brought after a notice of ejectment giving six months' time had been served upon the defendants. The notice was dated 26th Joista 1304 B. S., and its term was six months, from the 1st Assar 1304 B. S. to the last day of Aghran, same year. The suit was instituted on the 16th Magh 1304 B.S., corresponding to the 28th January 1898.

The defendants denied service of notice and contended that the suit for ejectment could not be maintained without service of

* Appeal from Appellate Decree, No. 1208 of 1899, against the decree of Babu Mohendra Nath Mitter, Subordinate Judge of Pubna and Bogra, dated the 15th of April 1899, reversing the decree of Babu Rebati Kanto Nag, Munsif of Pubna, dated the 8th of September 1898.

(1) (1895) I. L. R. 23 Calc. 200. (2) (1876) I. L. R. 2 Calc. 146.

1901

HEMANGINI CHOWDHRANI v. SRIGOBINDA CHOWDHURY.

notice. They also contended that the notice, if served, was illegal and insufficient, being given for improper time. It was also alleged that they had a permanent and mourasi right in the jamma, and as the land mentioned in the plaint did not constitute the entire jote, the suit was not maintainable.

The Munsif held that the defendants had a permanent interest in the disputed land and were not liable to ejectment after notice to quit; and that, even admitting that they were so liable, the notice proved to have been served was insufficient, as according to the plaintiffs' own case, the annual rent in respect of the jote was due at the end of Choitra every year. The suit was accordingly dismissed.

On appeal by the plaintiff, the Subordinate Judge held that the holding was not a permanent one, and that as annual rent was reserved, the defendants could be ejected at the end of the year, if the plaintiff succeeded in other respects. He further held that though the notice was insufficient, that fact was not fatal to the suit; and relying upon the case of *Ram Lal Patak* v. *Dina Nath Patak* (1), decreed the appeal, and directed that the plaintiff should get khas possession of the land in suit at the end of Choitra 1306 B. S. on payment of compensation.

1901
Nov. 19 & 20.

Babu Sarada Charan Mitra for the appellants.

Dr. Asutosh Mukerjee and *Babu Prya Sankar Mazumdar* for the respondent.

Nov. 22.

GHOSE and BRETT JJ. This was a suit in ejectment. The Court of First Instance dismissed it, but the Lower Appellate Court has given a decree to the plaintiff.

The real question that we are called upon to determine in this appeal is whether the notice to quit served upon the defendants, was reasonable and sufficient and whether the defendants are entitled to have the suit dismissed, if such notice was not reasonable and sufficient.

The notice with which we are concerned bears date the 26th of Joista 1304, and it calls upon the defendants to quit the land at the end of six months, namely, on the last day of the month of Agrahan of the same year 1304. It, however, treats

(1) (1895) I. L. R. 23 Calc. 200.

1902

HEMANGINI CHOWDHRANI v. GIRISHWARI CHOWDHURY.

the defendants as marfatdars, they having paid rent from year to year in place of the original tenant.

The suit was brought on the 28th January 1898 corresponding to the 16th Magh 1304.

The Lower Appellate Court has held that the tenancy in the occupation of the defendants was an annual tenancy expiring at the end of the year, and as such the notice served upon them was neither a reasonable nor a sufficient notice. But notwithstanding this the Subordinate Judge has held that the plaintiff is entitled to get khas possession of the land in suit and that he should get such possession at the end of the year 1306. We might here mention that that officer has also held that the defendants have not a permanent interest in the land in question, nor have they a transferable interest in it, and that the landlord has been treating them only as marfatdars.

In the view that we take of this case, and which we shall presently express, the question whether the defendants have a permanent and transferable interest in the property need not be considered; and as to the matter of the defendants being treated as marfatdars by the landlord, no importance, in our judgment, need be attached to it, for the simple reason that in this notice served upon the defendants, the landlord practically treats them as tenants in occupation of the property, and upon that footing gives them notice to quit the land. The true question therefore that we have to determine is whether the notice in question was a reasonable and sufficient notice; and, if it is not so, whether the defendants are entitled to have the plaintiffs' suit dismissed.

As already stated, the Subordinate Judge is of opinion that the notice is not sufficient or reasonable; but he holds at the same time, that this circumstance is not fatal to the case, and that it would meet the requirements of the case, if the plaintiff should get a decree for ejectment at the end of the year 1306.

Now it seems to us in the first place that, if the tenancy was an annual tenancy, and the rent was payable at the end of the year, as found by the Courts below, the defendants were entitled to have a notice calling upon them to quit at the end of a year of

1901

HEMANGINI CHOWDHRANI v. SRIGOBINDA CHOWDHURY.

the tenancy; and we agree in the view that the Subordinate Judge has expressed, that the notice which was served on the defendants was not a reasonable or sufficient notice.

The question then arises whether, if the notice is not reasonable or sufficient, a decree may well be given in this case entitling the plaintiff to eject the defendant at the end of a year, subsequent to the date of the institution of the suit. The learned vakil for respondent has, in support of the view adopted, and the decree pronounced, by the Court below, relied upon the case of *Ram Lal Patak* v. *Dina Nath Patak* (1), which followed an earlier case upon the same point, *viz*, *Hem Chunder Ghose* v. *Radha Pershad Paleet* (2).

We observe, however, that the case of *Hem Chunder Ghose* v. *Radha Pershad Paleet* (2) was not followed in the case of *Rajendro Nath Mookhopadhya* v. *Bassider Ruhman Khondkhar* (3) decided by a Full Bench of this Court, in which the correctness or otherwise of the ruling in that case was considered; and it was there held that in the case of a raiyat whose tenancy could only be determined by a reasonable notice to quit, expiring at the end of the year, the raiyat was entitled to claim to have the suit in ejectment brought against him dismissed, on the ground that he had no such notice. This case does not seem to have been considered in the case of *Ram Lal Patak* v. *Dina Nath Patak* (1). And we further observe that in the recent case of *Kishori Mohun Roy Chowdhry* v. *Nund Kumar Ghosal* (4), a divisional bench of this Court (THE CHIEF JUSTICE and BANERJEE J.) has held that in the case of a tenancy with an annual rent reserved, the tenant is entitled to six months' notice expiring at the end of the year of the tenancy before he can be ejected. In that case the suit for ejectment was dismissed upon the sole ground that a notice expiring at the end of the year was not given to the tenant.

The principle underlying the Full Bench case and the case last mentioned, in our opinion, equally applies to this case. The

(1) (1895)) I. L. R 23 Calc. 200. (2) (1875) 23 W. R. 440.
(3) (1876) I. L. R. 2 Calc. 146.
(4) (1897) I. L. R. 24 Calc. 720.

learned vakil for the respondent has, however, argued that the case of *Ram Lal Patak* v. *Dina Nath Patak* (1) was not considered in the case of *Kishori Mohun Roy Chowdhry* v. *Nund Kumar Ghosal* (2). Whether this was so, we do not know ; but as already mentioned, the case of *Hem Chunder Ghose* v. *Radha Pershad Paleet* (3), a case which was followed in *Ram Lal Patak* v. *Dina Nath Patak* (2), was discussed, but not followed in the case of *Rajendra Nath Mookhopadhya* v. *Bassidhur Ruhman Khondkhar* (4).

As already stated this was a case of an annual tenancy, and as such, the defendants could only be ejected at the end of a year of the tenancy.

The notice, therefore, should have called upon them to vacate at the end of the year, and it is obvious (and so it has been found by the Courts below) that the notice served upon them is not a sufficient or reasonable notice.

If, therefore, the notice was bad, the suit based upon such notice should, in our opinion, fail.

In this view of the matter we direct that the decree of the Court below be set aside and the suit dismissed upon the ground that the notice served upon the defendants was not reasonable or sufficient. The appellants will recover costs in all the Courts.

M. N. R. *Appeal decreed.*

(1) (1895) I. L. R. 23 Calc. 200. (2) (1897) I. L. R. 24 Calc. 720.
(3) (1875) 23 W. R. 440.
(4) (1876) I. L. R. 2 Calc. 146.