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BHYRUB CHUNDER BUNDOPADHYA v. SOUDAMINI DABEE.

MARKBY, J.—I concur in thinking that, under the circumstances of this case, the appellant had a right to recover from the respondent the amount claimed in respect of the two payments of Government revenue made by the appellant for the January and March quarters of 1872.

APPELLATE CIVIL.

Before Sir Richard Garth, Kt., Chief Justice, Mr. Justice Kemp, Mr. Justice Jackson, Mr. Justice Macpherson, and Mr. Justice Markby.

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Sept. 4.

RAJENDRONATH MOOKHOPADHYA (ONE OF THE DEFENDANTS) *v.* BASSIDER RUHMAN KHONDKHAR AND ANOTHER (PLAINTIFFS).*

Landlord and Tenant—Notice to quit—Suit for Ejectment—Procedure.

A ryot 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.

THIS case was referred to a Full Bench in the following order of reference (in which the facts sufficiently appear) by

MARKBY, J.—The facts of this case may be very shortly stated. The plaintiff was a cultivating ryot, not having (as far as appears) any right of occupancy and not holding for any specified term. In Jeyt, 1277, (13th May to 13th June, 1872), his landlord, without giving him any notice at all, put in a fresh tenant. In Pous, 1279, (14th December, 1872, to 12th January 1873), the plaintiff brought this suit to recover possession. The zemindar, who together with the in-coming tenant, defended the suit, alleged that the plaintiff had relinquished his tenure in 1276 (1869-1870). Both Courts have found that there was no relinquishment, and have given the plaintiff a decree.

In special appeal it is contended that the plaintiff had no title upon which he could recover possession. Of course, as against

* Special Appeal, No. 3205 of 1874, against a decree of the Officiating Subordinate Judge of Zilla Nuddea, dated the 22nd of September, 1874, affirming a decree of the Munsif of Kustea, dated the 30th of May, 1873.

any one but his own landlord, it is clear that the plaintiff had a title to recover possession; and even as against his own landlord, I should have thought that the plaintiff could have recovered possession. It is I think clear upon the authorities that he could not have been ejected without reasonable notice, and then only at the end of the year—*Bakranath Mandal* v. *Binodram Sen* (1) and *Janoo Mundur* v. *Brijo Singh* (2). And unless his tenancy has been put an end to by this present litigation, it is still subsisting.

This last point is the one upon which the doubt arises in consequence of a decision in *Hem Chunder Ghose* v. *Radha Pershad Paleet* (3). There the learned Judges, whilst recognizing the right of the tenant to a reasonable notice to quit, expiring at the end of the year, seem nevertheless to consider that the institution of a suit is itself a sufficient demand of possession for the purpose of maintaining the suit, and that the tenant's claim for a reasonable notice, expiring at the end of the year, will be satisfied by fixing such a date for giving up possession as will be fair towards himself.

If that be so, I do not think the plaintiff in the present case could recover possession; he would only be entitled to some compensation for having been ejected too soon.

But with very great deference, I cannot bring myself to think that the decision I have referred to is correct. I do not see how the landlord, who has not determined the tenancy by a proper notice, can recover in ejectment. Even in the case of a tenancy-at-will, it is necessary under English law that the will should be determined—*Doe d. Jacobs* v. *Philips* (4), where it was argued that the will was determined by bringing the action, but the Court held that it was not so. The case of a ryot whose tenancy can only be determined at the end of the year by a reasonable notice to quit is a much stronger one.

It seems to me impossible to consider such a ryot otherwise than as a tenant from year to year. I do not say that the incidents of the tenancy are precisely the same as those of a yearly

(1) 1 B. L. R., F. B., 25.
(2) 22 W. R., 548.
(3) 23 W. R., 440.
(4) 10 Q. B., 130.

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tenancy in England. But I cannot think that the ryot can be ejected without a proper notice to quit.

The case of *Hem Chunder Ghose* v. *Radha Pershad Paleet* (1) is based upon the decision in *Mahomed Rasid Khan Chowdhry* v. *Jœdoo Mirdha* (2); but I am strongly disposed to think that the learned Judges did not there intend to lay down any proposition of law at all; I think that decision only carries out a suggestion made by the Court for the benefit of the parties and in order to avoid further litigation.

The question being one of great importance, I feel myself justified in referring to the Full Bench the question whether a ryot, 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 brought against him by his landlord dismissed on the ground that he has had no such notice, or whether in such a case the Court ought to give a decree in favor of the landlord, fixing a date for giving up possession, which shall be fair towards the tenant.

Babu *Bama Churn Banerjee*, for the appellant, contended, that a ryot without either right of occupancy, or under-lease, was liable to be ejected by the landlord without a notice to quit having been given. [MACPHERSON, J.—Reasonable notice is necessary—*Bakranath Mandal* v. *Binodram Sen* (3).] The form in which the case is referred raises the question whether or not the bringing of an action is sufficient notice, but that question does not arise here. This suit is not by a landlord against a tenant, but by a tenant suing to be restored to possession. [GARTH, C.J.—If the tenant is entitled to notice to quit, although he has been turned out, yet he has an interest in the land.] The suit, when it is instituted, is sufficient notice—*Hem Chunder Ghose* v. *Radha Pershad Paleet* (1). The procedure required by Beng. Act VIII, 1869, s. 53, does not contemplate a notice to quit in the English sense. [JACKSON, J.—S. 53 provides for execution of decrees.] Unless the tenant has a right of occupancy, he can have no protection at all except that provided

(1) 23 W. R., 440. (2) 20 W. R., 401.
(3) 1 B. L. R., F. B., 25.

by the Act. [GARTH, C.J.—It must be taken for granted that a notice to quit must be given: a reasonable notice at the end of the year—*Mahomed Rasid Khan Chowdhry* v. *Jadoo Mirdha* (1).] Notice is not a question of right, it may be given for the sake of convenience. When a landlord brings a suit, the only ground on which the tenant can defeat the landlord is by showing, by an underlease or by right of occupancy, a right of possession in the land. The tenant can only claim a sufficient time, and such time can be fixed by the Court.

Moulvie *Murhamut Hossein*, for the respondent, was not called upon.

The opinion of the Full Bench was delivered by

GARTH, C.J.—We are of opinion that, in the case of a ryot of the class specified in the question referred to us,—*i.e.*, a ryot whose tenancy can only be determined by a reasonable notice to quit expiring at the end of the year,—the ryot can claim to have a suit for ejectment brought against him by his landlord dismissed on the ground that he has had no such notice.

APPELLATE CIVIL.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice R. C. Mitter.

NATHUNI MAHTON (DEFENDANT) *v.* MANRAJ MAHTON (PLAINTIFF).*

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Hindu Law—Mitakshara—Joint Family—Suit by one Member for a specific Share.

To a suit by one member of a Hindu joint family, living under the Mitakshara law, for a specific share of the joint family property, all the members of the family are necessary parties.

THIS was a suit for recovery of possession of a two-anna eight pie share in certain immoveable property.

* Regular Appeal, No. 26 of 1875, against a decree of Baboo Ram Prosaud, the Second Subordinate Judge of Zilla Patna, dated the 8th of October, 1874.

(1) 20 W. R., 401.