

## APPELLATE CIVIL.

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*Before the Hon'ble Mr. R. F. Rampini, Acting Chief Justice, and  
Mr. Justice Sharfuddin.*

1907  
June 18.

KHATER MISTRI

v.

SADRUDDI KHAN.\*

*Landlord and tenant—Ejectment—Res judicata—Denial of landlord's title—  
Dismissal of previous suit for rent, on denial of relationship of landlord and  
tenant.*

In a previous suit brought by the plaintiff against the defendant for rent the latter denied the existence of the relationship of landlord and tenant. The suit was dismissed on the ground that the defendant was not the plaintiff's tenant.

Plaintiff now sued to eject the defendant:—

*Held*, that having regard to the decision in the previous suit, the plaintiff was entitled to treat the defendant as trespasser and to sue him for ejectment.

*Nilmadhab Bose v. Ananta Ram Bagdi* (1), *Fayj Dhal v. Aftabuddin Sirdar* (2) and *Rangati Mohurer v. Pran Hari Seal* (3) followed. *Srimati Mallika Dassi v. Makham Lal Chowdhry* (4) referred to.

SECOND APPEAL by Khater Mistri, the defendant No. 1.

The suit out of which this appeal arose was brought by the plaintiff Sadruddi Khan for recovery of  *khas*  possession of certain lands with mesne profits from the defendant No. 1. The material allegations in the plaint were these. That the lands in suit were held by the plaintiff under a *maurasi patta* granted by the owners; that the defendant No. 1 had taken a settlement of the lands from the plaintiff from the beginning of the year 1304 B. S. and was holding possession by cultivating the same; that the defendant No. 1 not having paid the rent reserved, the plaintiff instituted a suit for rent in the year 1900; that he withdrew the said suit and brought another suit for rent in the year 1907; that in that suit the defendant No. 1 denied the existence of the relationship of landlord and tenant, and pleaded that he held the

\* Appeal from Appellate Decree, No. 2108 of 1905, against the decree of F. MacBlaine, District Judge of Nadia, dated June 6, 1905, reversing the decree of Jagat Narain Sarkar, Munsif of Ranaghat, dated Feb. 18, 1905.

(1) (1898) 2 C. W. N. 755.

(3) (1905) 3 C. L. J. 201.

(2) (1902) 6 C. W. N. 575.

(4) (1905) 9 C. W. N. 928.

lands as tenant under certain other persons who may be called the Muchi defendants; that the plaintiff having failed to adduce all his evidence the suit was dismissed by the first Court on the 31st of December 1901, and that decision was affirmed on appeal on the 19th of January 1903. The plaint laid the cause of action as arising on these two dates. The plaint also alleged that a notice to quit had been served on the defendant No. 1 on the 11th of Chaitra 1310 requiring him to quit the lands within the last date of the month of Chaitra 1310.

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The defendant No. 1 by his written statement denied plaintiff's title to the lands, denied having taken any settlement thereof from the plaintiff and denied receipt of any notice to quit.

The Munsif who tried the suit found that the plaintiff had established his alleged title to the lands; but he held that the defendant No. 1 was an occupancy *raiyat* and could not be ousted by the plaintiff summarily. He accordingly declared plaintiff's title to the lands but dismissed his claim for *khas* possession.

On appeal by the plaintiff, the District Judge gave him a decree for *khas* possession.

The defendant No. 1 now appealed to the High Court.

*Maulvie Syed Shamsul Huda (Babu Girija Prasanna Roy Chowdhry* with him), for the appellant. Denial of the relationship of landlord and tenant is not under the Bengal Tenancy Act a ground for ejection. The plaintiff must admit that prior to the rent suit the defendant was a tenant as otherwise his suit for possession would be barred by limitation, the defendant No. 1 being found to have been in possession for more than 12 years; if he was a tenant at the date of that suit neither the denial therein of the plaintiff's title nor the dismissal of that suit can have the effect of putting an end to that tenancy. The cases of *Nilmadhab Bose v. Ananta Ram Bagdi*(1) and *Fayj Dhali v. Aftabuddin Sirdar*(2) which, no doubt, cannot be distinguished from this case, have been questioned in *Srimati Mallika Dassi v. Makham Lal Chowdhry*(3), and it may be necessary to reconsider them.

[*Babu Mahendra Nath Roy*, for the respondent, referred to *Ramgati Mohurer v. Pran Hari Seal*(4).]

(1) (1898) 2 C. W. N. 755.

(3) (1905) 9 C. W. N. 928.

(2) (1902) 6 C. W. N. 575.

(4) (1905) 3 C. L. J. 201.

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The dismissal of the rent suit cannot have the effect of putting an end to an existing tenancy, it can only mean that the defendant was not a tenant during the period for which rent was claimed in the suit. If the plaintiff chooses to take that view of the case the defendant's possession must be taken to have been adverse all the while, and the suit for possession must fail on the ground of limitation.

*Babu Mahendra Nath Roy and Babu Krishna Prasad Sarvadhikary*, for the respondent, were not called upon.

RAMPINI, A.C.J., AND SHARFUDDIN, J. This appeal arises out of a suit brought for ejection of the defendant.

The facts are these according to the allegations of the plaintiff. The defendant was the tenant of the plaintiff on a plot of land of 8 bighas. The plaintiff sued the defendant for rent in 1900. The defendant denied that the relationship of landlord and tenant existed between the plaintiff and himself and the plaintiff withdrew his suit. In 1901 the plaintiff sued again for rent; and the defendant again pleaded that he was not the plaintiff's tenant. The suit was tried out. It was found that the defendant was not the plaintiff's tenant and the suit was dismissed. The plaintiff now sues for ejection of the defendant, and the defendant denies the plaintiff's title. He is not very specific in setting up his own title; but he does not allege that he is the plaintiff's tenant. The District Judge has therefore held, upon the authority of the case of *Nil Madhab Bose v. Ananta Ram Bagdi* (1), which was followed in the case of *Fayj Dhali v. Aftabuddin Sirdar* (2), that the defendant is now in the position of a trespasser and is liable to be ejected.

The defendant appeals; and on his behalf the case of *Srimati Mallika Dassi v. Makham Lal Chowdhry* (3) has been cited; and the pleader for the appellant very candidly admits that he cannot distinguish the facts of this case from those in the case of *Fayj Dhali v. Aftabuddin Sirdar* (2). Now, the learned Judges who decided the case of *Srimati Mallika Dassi v. Makham Lal*

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(3) (1905) 9 C. W. N. 928.

*Chowdhry* (1) do not expressly say that the cases of *Nil Madhab Bose v. Ananta Ram Bagdi* (2) and *Fayj Dhali v. Aftabuddin Sirdar* (3) have been wrongly decided. If they had been of that opinion, it would have been their duty to refer the matter to a Full Bench. We understand that they distinguished the facts of these two cases from those in the case of *Srimati Mallika Dassi v. Makham Lal* (1); and as we think, and the pleader for the appellant admits, that the facts of this case cannot be distinguished from those of the case of *Fayj Dhali v. Aftabuddin Sirdar* (3), it is clear that we are bound to follow the decision in that case and affirm the decision of the lower Appellate Court.

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We may mention that another case has been cited by the pleader for the respondent, namely, that of *Ramgati Mohurer v. Pran Hari Seal* (4), in which the cases of *Fayj Dhali v. Aftabuddin Sirdar* (3) and *Nil Madhab Bose v. Ananta Ram Bagdi* (2) have been followed. It appears to us that the plaintiff in this case has no option now but to treat the defendant as a trespasser and to sue him for ejectment. It has been decided in the last case, that is, the suit of 1901, that the defendant is not the plaintiff's tenant; and if the plaintiff now sues him as tenant he will be met by the plea of *res judicata*.

The pleader for the appellant also says that it has been found by the first Court that the defendant has been in possession of the land for more than 12 years. That is so. But the Munsif never held that the defendant had been in adverse possession for more than 12 years, but merely in possession of the land, and during part of that time he must have been a tenant; and that would seem to be the case, because the first occasion on which he repudiated the relation of landlord and tenant was in the course of the suit of 1900.

There is no reason, therefore, for our differing from the judgment of the lower Appellate Court; and we dismiss this appeal with costs.

*Appeal dismissed.*

S. CH. B.

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