

APPELLATE CIVIL.

Before Mr. Justice Rampini and Mr. Justice Sharfuddin.

GOPAL RAM MOHURI

v.

DHAKESWAR PERSHAD NARAIN SINGH.*

1908

Feb. 27.

*Forfeiture—Ejectment—Co-lessors—Suit for ejectment by one set of co-lessors
—Transfer of Property Act (IV of 1882), s. 111.*

In a suit for ejectment by one set of co-lessors on the ground that the principal defendants have forfeited their rights as tenants, under s. 111 of the Transfer of Property Act, having denied the title of the plaintiffs in a previous rent suit:—

Held, that though all the present plaintiffs were not parties to the previous rent suit, inasmuch as the said defendants not only denied the existence of the relation of landlord and tenant between them and the then plaintiffs, but set up a third party as their landlord in respect of the disputed land, they incurred a liability to have their tenancy forfeited.

Held further, that though in England any joint tenant may put an end to his demise as far as it operates on his own share, whether his companions join him in putting an end to the whole lease or not, yet according to the decisions, the relation created by contract with several joint landlords continues, until there exists a new and complete volition to change it. Where therefore the relation of joint landlords continues, the tenancy of the lessees cannot be put an end to, except by all the lessors acting together.

Ebrahim Pir Mahomed v. Cursetji Sorahji De Vitre(1) explained; *Fauj Dhalé v. Aftabuddin Sirdar*(2), *Rangati Mohurer v. Pran Hari Seal*(3) and *Ram Lochi Koeri v. Herbert Collingridge*(4), distinguished.

Held also, that the rule is different in the case of trespassers and in the case of tenants, when *khas* possession is not sought for. *Radha Proshad Wasti v. Esuf*(5), *Harendra Narain Singh Chowdhry v. Moran*(6) and *Kamal Kumari Chowdhurani v. Kivan Chandra Roy*(7) referred to.

SECOND APPEAL by the defendants 1st party.

The suit, out of which this appeal arose, was brought by some of the co-sharer landlords against the tenants, the defendants

* Appeal from Appellate Decree, No. 363 of 1905, against the decree of W. H. Vincent, District Judge of Bhagalpur, dated the 6th Feb. 1905, modifying the decree of Matilal Haldar, Subordinate Judge of Monghyr, dated 19th Aug. 1904.

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| (1) (1887) I. L. R. 11 Bom. 644. | (4) (1907) 11 C. W. N. 397. |
| (2) (1902) 6 C. W. N. 575. | (5) (1881) I. L. R. 7 Calc. 414. |
| (3) (1905) 3 C. L. J. 201. | (6) (1837) 1, 1 L. R. 15 Calc. 40. |
| | (7) (1898) 2 C. W. N. 229. |

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1st party, the other co-sharer landlords and others, for declaration of their title and ejectment of the tenants. The plaintiffs alleged that they and the defendants third party were the *maliks* of certain villages, that in these villages there was a *bazar* in the *mal* lands and that the defendants' 1st party had their houses and shops in the *bazar*, for which they had all along paid their rent to the *maliks*, until the defendants 2nd party bought a certain *lakhiraj* tenure in the vicinity of the *bazar* and in collusion with the tenants got rent decrees against them and put the plaintiffs out of possession. Some of these plaintiffs and the defendants third party then sued the tenants for rent. The tenants in these suits denied the plaintiffs' title to the rented lands and set up the title of a third. The plaintiffs therefore brought this suit. The defences of the tenants mainly were limitation and that, as the plaintiffs were not the *maliks* of the 16 annas share, they were not entitled to *khas* possession. The Subordinate Judge decreed the suit. On appeal, the District Judge modified the decree and gave the plaintiffs joint possession of the lands with the defendants, 1st party.

Hon. Dr. Rash Behari Ghose (*Babu Kshetra Mohan Sen* with him) for the appellants. As all the lessors have not joined, the suit must fail. [RAMPINI J. This is not an action under the Bengal Tenancy Act.

I cite *Reasut Hossein v. Chorwar Singh*(1) [RAMPINI J. In that case there was a condition of forfeiture.]

But the general principle holds good that, where the lessors mean to avail themselves of forfeiture, they must all join. This is also the equitable view. See also Transfer of Property Act, s. 111(f). The case of a trespasser is different. Even when a tenant by a contingency becomes a trespasser, a sharer of undivided property can bring an action for ejectment. Indian law favours a tenant more than English law does: *Alun Manjee v. Ashad Ali*(2), *Radha Proshad Wasti v. Esuf*(3), *Harendra Narain Singh Chowdhry v. Moran* (4), *Ebrahim Pir Mahomed v. Cursetji Sorabji De Vitre*(5), *Ghulam Mohiuddin Hossein v. Khairan*(6). Forfeiture

(1) (1881) I. L. R. 7 Calc. 470.

(2) (1871) 16 W. R. 138.

(3) (1881) I. L. R. 7 Calc. 414.

(4) (1887) I. L. R. 15 Cal. 40, 46.

(5) (1887) I. L. R. 11 Bom. 644.

(6) (1904) I. L. R. 31 Cal. 783.

cannot be taken advantage of even in English law in such cases. On any view, the landlord must do some act to show his intention to get rid of the tenant. This has not been done here.

Babu Umakali Mukherji (Babu Kulkunt Sahay with him) for the respondents. *Fayj Dhuli v. Aftabuddin Sirdar*(1) is in my favour. [RAMPINI J. That was a case of one lessor.]

But a decree of Court affirming denial operates as a forfeiture: *Rangati Mohurer v. Pran Hari Seal*(2). As to express acts of a landlord showing intention to eject, see *Kamal Kumari Chowdhurani v. Kiran Chandra Roy*(3), where it is held that a suit itself is notice. [RAMPINI J. Not in such cases as this.]

Forfeiture being complete, future circumstances do not alter the situation. All the landlords did join, but now one has retired. See *Ram Lochi Koeri v. Collingridge*(4), where the Court gave a decree for partition. Here, again, the landlords were realizing rents separately.

[RAMPINI J. That does not help you.]

Babu Kshetra Mohan Sen in reply. We took the objection of defect of parties from the outset. *Fayj Dhali v. Aftabuddin Sirdar*(1) has not been followed. *Kamal Kumari Chowdhurani v. Kiran Chandra Roy* (3) is distinguishable. See Mr. Justice Rampini's Bengal Tenancy Act (last edition), p. 275.

RAMPINI AND SHARFUDDIN, JJ. This is an appeal against a decision of the District Judge of Bhagalpur, passed in a suit brought to eject the defendants from certain bazar lands.

The plaintiffs are the owners of a 14 annas odd share of the land. The defendants third party are the owners of the remaining 1 anna odd share. The principal defendants are the occupiers of the land. The plaintiffs allege that the principal defendants in a rent suit denied their title as landlords, and set up the title of a third person. Hence the defendants have forfeited their rights as tenants, and so they (the plaintiffs) sue for *khas* possession of their share of the land.

(1) (1902) 6 C. W. N. 575.

(2) (1905) 3 C. L. J. 201.

(3) (1898) 2 C. W. N. 229.

(4) (1907) 11 C. W. N. 397.

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The District Judge has given the plaintiffs a decree.

The defendant 1st party appeals, and on his behalf it has been urged (1) that all the plaintiffs were not parties to the previous rent suit and that the defendants therefore only forfeited their rights of tenancy as regards the plaintiffs, who were parties to that suit; (2) that all the co-owners in the land have not joined in this suit, and therefore the plaintiffs cannot succeed; and (3) that the plaintiffs asked for *khas* possession along with the defendants third party, and have been given a decree for joint *khas* possession along with the defendants first party.

It is true that in the previous rent suit all the present plaintiffs were not parties. But in that suit the principal defendants not only denied the existence of the relation of landlord and tenant between them and the then plaintiffs, but set up a third party as their landlord in respect of the disputed land. Hence, they renounced all the present plaintiffs as their landlords, and appear to have incurred a liability to have their tenancy forfeited.

The learned pleader for the appellants in support of his second plea draws attention to the terms of section 111 of the Transfer of Property Act, which is applicable to this case, as the land, from which it is sought to evict the defendants, is not agricultural land. He argues that a forfeiture is not incurred *ipso facto* by the renunciation of the plaintiffs as landlords, but must be followed by some act showing an intention on the part of the lessors to determine the lease, and he contends that this can only be done by all the lessors acting jointly and not by some of the co-lessors, however large their interest in the lease. In support of this contention he calls our attention to the cases of *Ahum Manjee v. Ashad Ali*(1), *Radha Proshad Wasti v. Esuf*(2), *Reasut Hossein v. Chorwar Singh*(3), *Harendra Narain Singh Chowdhry v. Moran*(4), *Ghulam Mohiuddin Hossein v. Khairan*(5), and *Ebrahim Pir Mahomed v. Cursetji Sorabji De Vitre*(6). On the other hand, the respondent's pleader relies on the cases of *Kamal Kumari Chowdhurani v. Kiran Chandra Roy*(7), *Fayj Dhali v. Aftabuddin*

(1) (1871) 16 W. R. 138.

(2) (1881) I. L. R. 7 Calc. 414.

(3) (1881) I. L. R. 7 Calc. 470.

(4) (1887) I. L. R. 15 Calc. 40.

(5) (1904) I. L. R. 31 Calc. 786.

(6) (1887) I. L. R. 11 Bqm. 644.

(7) (1898) 2 C. W. N. 229.

Sirdar(1), *Ramgati Mohurer v. Pran Hari Seal*(2) and *Ram Lochi Koeri v. Collingridge*(3).

We think the rule to be deduced from these cases is, as laid down in *Ebrahim Pir Mahomed v. Cursetji Sorabji De Vitre*(4), that though in England any joint tenant may put an end to his demise, as far as it operates on his own share, whether his companions join him in putting an end to the whole lease or not, yet according to the Indian decisions the relation created by contract with several joint landlords continues, until there exists a new and complete volition to change it. The rule is different in the case of trespassers [*Radha Proshad Wasti v. Esuf*(5), *Harendra Narain Singh Chowahry v. Moran*(6)] and also in the case of tenants, when *khas* possession is not sought for [*Kamal Kumari Chowdhurani v. Kiran Chandra Roy*(7)], but this would seem to be the law as settled in India in the cases of tenants, when *khas* possession is the relief asked for. In the cases of *Fayj Dhali v. Aftabuddin Sirdar*(1) and *Ramgati Mohurer v. Pran Hari Seal*(2), there was no question of co-lessors. There was apparently only one lessor. In *Ram Lochi Koeri v. Collingridge*(3) there was not one lease, but three leases, and on the determination of one of the leases, the lessor sued for partition and *khas* possession, which she was certainly entitled to. But where the relation of joint landlords continues, it would seem the tenancy of the lessees cannot be put an end to, except by all the lessors acting together. If in this case the tenancy had been determined by all the lessors, and the lessees deprived of their character of tenants, and reduced to that of trespassers, the plaintiffs would certainly, we think, have been entitled to the relief they ask for, but as the lessors (*i.e.* all the lessors) have not in the terms of Section 111 of the Transfer of Property Act, shown their intention to determine the lease, they cannot succeed.

It would seem to be a hardship that the plaintiffs, who represent a 15 annas share of the lessor's interest, should in consequence of the collusion of their one anna co-sharers with the

(1) (1902) 6 C. W. N. 575.

(2) (1905) 3 C. L. J. 201.

(3) (1907) 11 C. W. N. 397.

(4) (1887) I. L. R. 11 Bom. 644.

(5) (1881) I. L. R. 7 Calc. 414.

(6) (1887) I. L. R. 15 Calc. 40.

(7) (1893) 2 C. W. N. 220.

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principal defendants, be unable to obtain *khas* possession against the latter, but such would seem to be the effect of the Indian decisions and we must follow them.

We accordingly decree this appeal with costs.

Appeal decreed.

S. M.