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not of the description to which this salutary principle can have any application.

The result, therefore, is that this Rule must be discharged with costs.

S. C. G. *Rule discharged.*

FULL BENCH.

Before Sir Lawrence H. Jenkins, K.C.I.E., Chief Justice, Mr. Justice Woodroffe, Mr. Justice Mookerjee, Mr. Justice Carnduff and Mr. Justice D. Chatterjee.

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Sept. 5.

RAJ KUMARI DEBI

v.

BARKATULLA MANDAL.*

Under-raiyat—Patta for a period of indefinite duration—Ejectment—Notice—Bengal Tenancy Act (VIII of 1885), s. 49, cl. (b).

The case of an under-raiyat holding under a *patta* executed before the passing of the Bengal Tenancy Act and not expressly providing for the period of its duration, comes within cl. (*b*) of s. 49 of the Bengal Tenancy Act, and the notice must be as provided thereunder.

Madan Chandra Kapali v. *Jaki Karikar* (1) overruled.

REFERENCE to Full Bench.

The reference to Full Bench, by Chitty and N. R. Chatterjea JJ., so far as it is material for the purposes of this report, was in the following terms :—

"This second appeal arises out of a suit brought by the plaintiffs to eject the defendants from certain land. The facts are that the plaintiff is an occupancy raiyat of the said land. On 18th *Sraban* 1288 (1st August 1881), the predecessor of the defendants executed in favour of the plaintiff a *kabuliat* as *korfa* or under-raiyat. The *kabuliat* was for no fixed period

* Reference to Full Bench in Appeal from Appellate Decree No. 1495 of 1909.

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or term. The defendants were holding the land under that *kabuliat* and were served by the plaintiff with a notice to quit, in accordance with the terms of section 49 (*b*) of the Bengal Tenancy Act. The Courts below following the case of *Madan Chandra Kapali* v. *Jaki Karikar* (1), have dismissed the plaintiffs' suit. The plaintiffs have appealed.

The Courts below have referred to the cases of *Komaruddi* v. *Sreenath Chowdhury* (2), *Mohendra Nath Sepai* v. *Parbutty Charan Dass* (3), and *Idugazi Doctor* v. *Chandra Kali Sundrani* (4). They distinguish them by saying that in those cases the *kabuliats* were after the passing of the Bengal Tenancy Act. As a matter of fact, in the first of the three cases, the date of the *kabuliat* or *patta* does not appear. In the second, the *kabuliat* was no doubt after the passing of the Act, *i.e.*, in 1893. But, in the third, the *patta* was dated 13th *Baisak* 1290 (26th April 1883). The actual date of the lease does not, in my opinion, make much difference. The question turns upon the construction to be put upon section 49 of the Bengal Tenancy Act. If the words "written lease" are to be given their ordinary meaning, then it is clear that in enacting section 49, the Legislature omitted to provide for a case where an under-raiyat holds under a written lease for an indefinite period. This was the view taken in the case of *Madan Chandra Kapali* v. *Jaki Karikar* (1), where the learned Judges said: "But if he holds under a written lease for an indefinite time, his raiyat lessor cannot eject him arbitrarily. He can only do so for non-payment of the rent." In the case of *Komaruddi* v. *Sreenath Chowdhury* (2), decided by the late Chief Justice and Mitra J., it was held that "written lease in sub-section (*b*) means such a written lease as is mentioned in sub-section (*a*), that is, a written lease defining the term of the tenancy." The case of *Madan Chandra Kapali* v. *Jaki Karikar* (1) was not referred to on that occasion. In the other two cases, in 8 Calcutta Weekly Notes, decided by Mitra J., very shortly after the first, that case was referred to, but the learned Judge adhered to the view which was taken by the late Chief Justice and himself. With all respect to those learned Judges, we would point out that it is only by implication from the preceding words that the words "written lease" in sub-section (*a*) can be taken to denote only a written lease for a definite term. To fix them with that meaning some other words must be read into the section, whether in sub-section (*a*) or (*b*). However, as the cases in 6 and 8 Calcutta Weekly Notes stand, that in the former volume is in direct conflict with those in the later volume. The question is one of considerable importance to raiyats and under-raiyats, and we would, therefore, refer it to the Full Bench. The question will be:—Whether in the case of a under-raiyat holding land from

(1) (1902) 6 C. W. N. 377.
(2) (1903) 8 C. W. N. 136.
(3) (1903) 8 C. W. N. 136.
(4) (1903) 8 C. W. N. 139.

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a raiyat under a written lease executed before the passing of the Bengal Tenancy Act, the lease not being expressed to be for any definite term, the under-raiyat is liable to ejectment, and, if so, after what notice. Certain other cases were cited which turn on the construction to be put upon section 85 of the Act. These have, in our opinion, no direct bearing upon the present question."

Babu Surendra Chandra Sen, for the appellant. I contend that the lease was terminable by notice. A "lease" is not defined in the Bengal Tenancy Act, but a "tenant" is. Strictly speaking, there cannot be a lease for an indefinite period.

I submit that the case is covered by cl. (*b*), if the words "for a term" are introduced after the words "written lease" in the clause. Those words are there by implication.

The tenants were really tenants-at-will. My first contention is that having regard to s. 85(*3*) of the Bengal Tenancy Act, if it is a lease, cl. (*b*) applies; and if it is not a lease, cl. (*a*) applies. Sections 49 and 85 should be read together.

Sections 10, 18, 25, 44 and 49 are sections under which tenants are liable to be ejected. There is also the s. 178 (1), cl. (*c*). All tenants except *mokarrari* ones are liable to be ejected. Therefore, if under-raiyats cannot be ejected by notice, he would enjoy higher rights than even occupancy raiyats or tenants at fixed rates. Before the passing of the Bengal Tenancy Act, the position of tenants was less secure. Now raiyats have the right to let out land for a certain period. *Madan Chandra Kapali* v. *Jaki Karikar* (1) is against me. But the case has not been followed.

The question of notice does not even appear in the judgments of the Courts below. Perhaps the only question in issue was, if the case came under cl. (*b*)

(1) (1902) 6 C. W. N. 377.

of s. 49, taking the duration of lease only into consideration.

I am prepared to concede that he was a tenant from year to year, and I was bound to give him reasonable notice before the end of the year. In this case, I was more than careful, lest the tenant raised the objection that, after the passing of the Bengal Tenancy Act, he could be ejected under the provisions of that Act only. I gave notice under cl. (*b*) of s. 49. "Under-raiyat" in clause (*b*) must mean *all sorts* of under-raiyats.

The cases of *Komaruddi* v. *Sreenath Chowdhry*(1) and *Idugazi* v. *Chandra Kali Sundrani*(2) are in my favour. So is *Mohendra Nath Sepai* v. *Parbutty Charan Dass* (3). The head-note of this case is wrong.

Babu Hari Charan Ganguli, for the respondent. The lower Courts and the referring Judges have taken it to be a written lease. The lease must be admitted. Such leases are quite common. "Lease" has been defined in the old Rent Act and covered all sorts of tenancy. The meaning of the word is now too well known to require a definition. That is the reason that the word has not been defined in the new Act. A lease need not be for a definite period. If the Legislature meant it to be otherwise, it could have framed the sections in definite terms: see s. 3 of the Registration Act.

I contend that a lease for an indefinite period enures to the benefit of the tenant. A sub-lease is binding on the raiyat, but not on the landlord. The Legislature did not intend to interfere with the contractual relationship between a raiyat and his under-raiyat.

(1) (1903) 8 C. W. N. 136. (2) (1903) 8 C W. N. 139.
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I do not quite mean to say that the lease was a permanent lease. I say that the raiyat is debarred from contending that the under-raiyat is liable to ejectment.

By dichotomy, unwritten leases would be excluded from the consideration of the Legislature.

Cur. adv. vult.

The judgment of the Court (JENKINS C. J., WOODROFFE, MOOKERJEE, CARNDUFF and D. CHATTERJEE JJ.) was as follows :—

The decision of the question referred in this case depends upon the proper construction of section 49 of the Bengal Tenancy Act. Chapter VII of the Act, which deals with the under-raiyats, consists of two sections. Section 48, speaking of the limit of rent recoverable from under-raiyats, divides rent into two classes: rent payable under a registered lease or agreement, and rent payable in any other case, thus comprising all classes of under-raiyats. Section 49, dealing with the ejectment of under-raiyats, divides them into two classes: clause (*a*) speaks of those who hold under a written lease, and clause (*b*) speaks of those who hold otherwise than under a written lease. The term "written lease" in clause (*a*) is necessarily restricted by the word "term" used before to written leases which are for a term or period of duration mentioned in the lease. The word "term" is not repeated in clause (*b*), and it is therefore contended on the authority of the case of *Madan Chandra Kapali* v. *Jaki Karik r* (1) that the case of an under-raiyat who holds under a *patta* which does not provide for any period of duration, is omitted from the purview of the section, and that he cannot therefore be ejected except

(1) (1902) 6 C. W. N. 377.

under section 66 for non-payment of rent. The Court is of opinion that there is no sufficient reason for holding that the Legislature made any such omission either by intention or by mistake. As regards intention, there is no reason why a tenant of this class should attract any particular favour from the Legislature. As regards mistake, it must be remembered that this class of *pattas* called *méla pattas* or *be-miadi pattas* are very common in Bengal and could not have escaped notice. Looking at the whole scheme of the Act and the manner in which the different classes of tenants are dealt with in its different provisions, the Court holds that the proper construction to be placed on the word "written lease" in clause (*b*) is to read them as indicating a written lease of the same kind as that mentioned in clause ( ).

The answer to the Reference, therefore, is that the case of an under-raiyat holding under a *patta* executed before the passing of the Bengal Tenancy Act and not expressly providing for the period of its duration comes within clause (*b*) of section 49, and the notice must be provided thereunder.

In this view of the case, the appeal must be decreed with costs.

Appeal allowed.

S. M.