

APPELLATE CIVIL.

Before Chapman and Mullick JJ.

GURU CHARAN HAJAM

v.

SUKLAL HAJAM.*

1913
April 18.

Ejectment—Chota Nagpur Tenancy Act (Beng. VI of 1908), ss. 4(3), 41—Non-occupancy raiyats—Under-raiyats, ejectment of—Transfer of Property Act (IV of 1882), s. 106—Incidents of tenancy created by contract or custom—Verbal notice, sufficiency of.

Where a raiyat sued an under-raiyat in ejectment and got a decree but, on appeal, the Judicial Commissioner of Chota Nagpur dismissed his suit on the ground that the provisions of s. 41 of the Chota Nagpur Tenancy Act had not been complied with, as an under-raiyat has at least the rights of a non-occupancy raiyat :

Held, that the view taken by the Judicial Commissioner was erroneous. An under-raiyat must for the purposes of that Act be treated as belonging to a class of tenants quite distinct from the class of non-occupancy raiyats. Those portions of that Act which dealt with tenants generally could be applied to under-raiyats.

In a suit for ejectment of an under-raiyat by a raiyat, the Court can have regard only to the relations established between the parties either by contract or custom.

Where there is no evidence of a lease, the tenancy would no doubt be ordinarily held to be a tenancy from year to year.

There is no statutory provision that the tenancy of an under-raiyat in Chota Nagpur can be terminated only by a notice in writing.

SECOND APPEAL by Guru Charan Hajam, the plaintiff.

The facts are briefly as follows.

* Appeal from Appellate Decree, No. 2424 of 1911, against the decree of D. H. Kingsford, Judicial Commissioner of Chota Nagpur, dated July 15, 1911, reversing the decree of J. Macpherson, Deputy Collector of Khunti, dated Aug. 3, 1910.

The defendant held certain plots of land as a *dar-raiyat* under the plaintiff, who was a raiyat of Gitilbera. As the plaintiff wished to take the defendant's lands in his *lhas* cultivation, he orally asked the defendant to give up possession of these plots of land in the month of Pous. The Deputy Collector of Khunti decreed plaintiff's suit for ejection, but, on appeal by defendant, the Judicial Commissioner of Chota Nagpur dismissed the suit, holding "that the plaintiff neither proved nor alleged any of the grounds under section 41, Chota Nagpur Tenancy Act, which grounds are the only ones upon which a raiyat possessing non-occupancy rights (which are the least rights that defendant can possess) may be ejected." The plaintiff thereupon appealed to the High Court.

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Babu Shib Chandra Palit, for the appellant. Section 41 of Beng. Act VI of 1908 has no application to this case. It deals with ejection of non-occupancy raiyats. The defendant is an under-raiyat. Section 4, cl. (3), shows there is a distinct class of tenants called under-raiyats. There is no provision in the Act laying down the procedure to be followed in order to eject an under-raiyat. Verbal notice has been given to the under-raiyat determining his tenancy: *Rain Narayan Sahu v. Maangru Urao*(1). He is liable to ejection.

Babu Kshetra Mohan Sen, for the respondent. An under-raiyat must be treated as a non-occupancy raiyat in a suit for ejection. There being no distinct provision for the ejection of an under-raiyat, the provisions of section 4, of the Chota Nagpur Tenancy Act apply. As regards the notice, it was insufficient.

Cur. adv. vult.

(1) (1900), 4 C. W. N. 792.

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CHAPMAN AND MULLICK JJ. The appellant is a raiyat. He sued the defendant, who is an under-raiyat, in ejectment. The learned Judicial Commissioner has in appeal dismissed the appellant's suit upon the ground that the provisions of section 41 of the Chota Nagpur Tenancy Act have not been complied with. That section provides that non-occupancy raiyats shall not be ejected, except upon certain grounds, and the learned Judicial Commissioner holds that an under-raiyat has at least the rights of a non-occupancy raiyat. This view is in our opinion erroneous. It is clear from the definitions in section 4 of the Act that an under-raiyat must for the purposes of the Act be treated as belonging to a class of tenants quite distinct from the class of non-occupancy raiyats. It is true that there is no provision in the Act dealing separately with the class "under-raiyats" defined in section 4, but that does not do away with the effect of the definitions in section 4, which is that where the Act refers to non-occupancy raiyats the reference must not be taken to include under-raiyats. It is only those provisions of the Act which deal with tenants generally that can be applied to under-raiyats.

The result is that, for the purpose of deciding the questions raised by a suit for the ejectment of an under-raiyat by a raiyat, the Court can have regard only to the relations established between the parties either by contract or by custom. Where there is evidence of a lease (oral or written), the matter must be decided by reference to that evidence. Where there is no evidence of a lease, the tenancy would no doubt be ordinarily held to be a tenancy from year to year (section 106, Transfer of Property Act, by analogy), the year for this purpose being held to be the agricultural year. It is also necessary to bear in mind that, before a suit in ejectment of a tenant of

any kind can rightly succeed, it must be shown that the tenancy has been terminated. But there is no statutory provision that the tenancy of an under-raiyat in Chota Nagpur can be terminated only by a notice in writing.

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In the present case it may be taken that the under-raiyat is a tenant from year to year. The appellant asserted that he asked the defendants to give up possession in Pous of the previous year. This assertion was not denied in the written statement, and no point in connection with the sufficiency of the notice was raised in either of the Courts below. No custom of right to notice for any particular period was ever alleged, and it was never suggested that the time given to quit was unreasonably short, or that the period of the notice did not expire with the periodic year of the tenancy. We take it, therefore, that the tenancy was terminated before the suit was brought. The appellant was, therefore, entitled to succeed. The appeal is allowed. The judgment and decree of the learned Judicial Commissioner is set aside. The suit is decreed with costs in all Courts. The appellant is entitled to *khas* possession.

G. S.

Appeal allowed.