

Rani Dassi and ors. Vs. Dwarka Nath Santra and anr.

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SooperKanoon Citation : sooperkanoon.com/867896

Court : Kolkata

Decided On : Dec-20-1900

Reported in : (1901)ILR28Cal308

Judge : Ghose and ;Pratt, JJ.

Appellant : Rani Dassi and ors.

Respondent : Dwarka Nath Santra and anr.

Judgement :

1. The real question that has been raised on behalf of the appellants in this case is, whether the notice which was served upon the appellants in Bhadro 1302, calling upon them to vacate the land in suit in Baisak 1303, is a good notice, having regard to the provisions of Section 49 of the Bengal Tenancy Act. The defendants have been found to be under-raiyats to whom the provisions of that section are applicable. The contention on behalf of the appellants is that, inasmuch as they were required to vacate the land in the early part of the year, and not at the end of the year, it is a bad notice, and therefore the suit based upon such a notice is not maintainable. Section 49 provides:

An under-raiyat shall not be liable to be ejected by his landlord, except (a) on the expiration of a term of a written lease; (b) when holding otherwise than under a written lease, at the end of the agricultural year next following the year in which a notice to quit is served upon him by his landlord.

2. What we are really asked to do is to insert after the words 'notice to quit' the words 'expiring at the end of the said year;' for Clause (b) of the section, as it stands, does not require that the notice should mention any particular time within which the under-raiyat is to quit the land. Referring to the provisions of Section 106 of the Transfer of Property Act, we find that where the Legislature intends that a notice to quit should specify the precise time within which the person to whom it is given must quit, it uses words which indicate that intention. There, the words are 'by six months' notice expiring with the end of a year of the tenancy,' and again 'by fifteen days' notice expiring with the end of a month of the tenancy.' Similar words do not occur in Section 49 of the Bengal Tenancy Act, and we are therefore unable to say that the notice in question was bad in law. The view that we adopt is the same which was laid down by a Divisional Bench of this Court in the case of *Naharullah Patwari v. Madan Gazi* (1896) 1 C.W.N 133. Mr. Justice Macpherson in delivering the judgment of the Court, made, amongst others, the following observations:

The Legislature advisedly seems to have refrained from fixing any period of notice, and the section was probably framed as it is framed with the view of doing away with all questions of the unreasonableness or otherwise of the notice, it being considered sufficient to intimate the landlord's intention of determining the tenancy and leaving the law to operate, so that the raiyat, if he chooses to remain on the land, shall not be ejected until a certain time had expired after the notice was served. The circumstance that the landlord has called upon the tenant to quit at a time when he could not compel him to do so does not, we think, vitiate the notice. A notice to quit without specifying any period would be open to the same objection on the ground that it was a notice to quit at once.

3. The suit for ejectment founded on the notice in question was not brought until two years after the expiry of the year 1303, and it is obvious therefore that the defendants could not have been prejudiced by reason of the notice not specifying the time at which they would be liable to ejectment under the provisions of Section 49 of the Act.

4. The appeal is dismissed with costs.

