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Court : Kolkata

Decided On : May-31-1915

Reported in : 37Ind.Cas.201

Judge : Asutosh Mookerjee and ;Roe, JJ.

Appellant : Paramananda Singh

Respondent : Syjou Singh

Judgement :

1. This is an appeal by the defendant in an action in ejectment. On the 18th April 1904, the defendant took a lease of the disputed land from the plaintiff for a term of three years, from the 13th April 1904 to the 12th April 1907. The lease provided explicitly that the tenant would give up possession upon the expiry of the term and that, if he desired to continue as tenant, he would take a fresh lease. The term expired, but the defendant neither took a fresh lease nor made over possession of the land to the plaintiff. The consequence was that on the 8th and 15th October 1910, the plaintiff gave notices to the defendant and asked him to quit the land on the 13th April 1911. This demand was infructuous, and on the 29th June 1911 the plaintiff commenced this action to eject the defendant. The Subordinate Judge has held that the tenancy terminated upon the expiry of the prescribed term of three years and that thereafter, as the landlord did not assent to the continuance of the occupation by the defendant, the latter became a trespasser liable to be ejected without service of notice to quit. On the present appeal, this view has been

assailed as erroneous in law.

2. The disputed land lies in the district of Sylhet, where Act VIII of 1869 B. C. is still in operation. Section 53 lays down that whenever in any suit, brought by any zemindar or other person in receipt of the rent of the land, to eject any cultivator not having a right of occupancy or to eject any farmer or other tenant holding only for a limited period, after the determination of the lease or tenancy, the Court shall pass a decree in favour of the plaintiff, no application in the form provided in Section 212 of Act VIII of 1859 shall be necessary, but the Court shall forthwith, upon the plaintiff depositing in Court the necessary expenses, make an order for delivery of possession in execution of the decree. In the present case, the Subordinate Judge has found that the defendant is not a cultivator with a right of occupancy. Consequently, on the determination of his lease, he was liable to be ejected forthwith in execution of a decree in the manner prescribed in Section 53. But it has been argued that as he has remained in possession after the expiry of the term of the lease, he has acquired an undefined interest in the land and is entitled to continue in occupation till that interest has been determined by notice to quit. This argument is entirely fallacious.

3. On the determination of a lease for a term, the lessee is bound to surrender possession to the lessor; on default he may be ejected without notice, for though he entered into the land with right, he has remained without right, as the tenant cannot be said to hold over unless the landlord assents to the continuance of his possession: *Durji Nikarini v. Goberdhan Bose* 24 Ind. Cas. 183 : 20 C. L.J. 448 : 19 C.W.N. 525. But the appellant has contended that the mere continuance of his possession gives him the status of a tenant, and, in support of this view, has invited our attention to the decision in *Huronath Roy v. Smith* 2 W.R. 73. That case is clearly distinguishable. There, under the terms of the lease, the tenant was entitled to retain possession of a part of the premises, even after the expiry of the term, and was bound to execute a fresh settlement in respect of such portion. The question arose, whether the mere fact that such fresh lease had not been executed, affected the position of the tenant; the answer was adverse to the landlord, for it was found that the tenant had expressed his readiness to accept the lease from the landlord, who had refused to execute the document. There is, on

the other hand, a long line of authorities in this Court which negative the contention of the appellant. Reference may be made to the judgment of Sir Barnes Peacock, C. J., in *Ram Khelawun Singh v. Musammat Soondra* 7 W.R. 152. where the Chief Justice observed that, according to English Law and according to general principles of justice, if, after the expiration of a lease, a landowner continues to receive rent for a fresh period, he must be deemed to have acquiesced in the tenant's continuing to hold upon the terms of the original lease and cannot turn out the tenant or treat him as a trespasser without giving him reasonable notice to quit. In the earlier decision of *Mackintosh v. Gopee Mohan Mojomdar* 4 W.R. 24.] the proposition was formulated that to justify a holding over after expiry of a lease, a direct consent on the part of the landlord is requisite; and that no implication of consent can or should be received, where there has been every opportunity of consent in express terms. Later decisions, specially those of *Sadhoo Jha v. Bhupwan Oopadhya* 5 W.R. Act X Rulings 17 : 1 Ind. Jur. (N.S.) 75. *Sofaoll Khan v. Woopean Khan* 9 W.R. 123. *Jumaut Ali Shah v. Ghutturdharee Sahee* 16 W.R. 185. and *Ganapathi Mudali v. Venhatalakshmi narasayya* 25 Ind. Cas. 109 : (1914) M.W.K. 728. indicate that this Rule was too broadly expressed and that the assent of the landlord to the continuance of the occupation of the tenant after expiry of the term may be indicated by acceptance of rent or by conduct which justifies an inference to that effect. But there is no authority, except possibly a dictum of Patteson, J., in *Doe d. Thomas v. Field* (1831) 2 Dowling P.C. 542.) mentioned in *Faby v. O'Donnell* (1870) 4 Ir. R.C.L. 332 at p. 335. ,, which supports the proposition that merely because the landlord tolerates the continuance in occupation of the tenant after the expiry of the term, the inference follows as a matter of course that he accepts his former tenant as his tenant in future. This proposition is, on the other hand, opposed to the decision in *Ratan Lal Gir v. Farshi Bibi* 34 C. 396 : 11 C.W.N. S2G. It is also opposed to the decision of Mansfield, C. J., in *Doe d. Godsell v. Inglis* (1810) 3 Taunt. 54 : 128 E.R. 22 where, the contention was that, as the tenant had continued in occupation after the expiry of the term, he was entitled to notice to quit, though there was nothing to indicate that his continuance had been accepted by the landlord. Mansfield, C. J., observed: 'You do not show that the holding subsequent, to the expiration was with the assent of the lessor.' Reliance was there, as here, v placed

upon the fact that the landlord had served a notice to quit; and it was argued, that this circumstance afforded an unfailing indication that the defendant was still a tenant, whose tenancy was required to be terminated by a notice to quit. This contention was overruled in the following terms: This writing is not in the least like a notice to quit; but it is a mere demand of possession, the defendant's term having sometime since expired. The lessor of the plaintiff need not have given any notice at all ; but the circumstance of his having given a notice will not hurt him.' In our opinion, it is incontrovertible that the defendant in this case ceased to be tenant upon the expiry of his term and is liable to be ejected in the manner prescribed in Section 53 of Act VIII of 1869 B. C. The position might have been different if the provisions of the Bengal Tenancy Act had governed this case; but we need not deal with this aspect of the matter, because that Statute admittedly has no application.

4.The result is that the decree of the Court below is affirmed and this appeal dismissed with costs.

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