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ORIGINAL CIVIL.

Before the Honourable Chief Justice Farran and Mr. Justice Starling.

SHAIK HUSAIN (ORIGINAL DEFENDANT), APPELLANT, *v.* GOVARDHANDA'S PARMA'NANDA'S (ORIGINAL PLAINTIFF), RESPONDENT.* 1895. *July*

Landlord and tenant—Ejectment—Tenure—Plea by defendant that he held the land by Fazendári tenure for building purposes—Permission to build—Counterparts of leases produced by landlord—Execution of counterpart denied by defendant—Ancient documents—Claim of tenant to compensation for buildings erected by him.

In a suit for ejectment brought in 1894 the defendant contended that he held the land on permanent Fazendári tenure, and produced a document, dated 1848, by which his predecessor was given permission to build upon the land. The plaintiff (landlord), however, produced the counterparts of a subsequent lease to the same tenant (defendant's predecessor), dated 1851, which created a monthly tenancy, and of a later one to the defendant himself, dated 1859, creating a yearly tenancy determinable on a month's notice, under which provision this suit was brought. The defendant denied that he had executed this document, and contended that it was not proved. The lower Court held that these documents were admissible as ancient documents, and relying upon them passed a decree for the plaintiff. On appeal,

Held, confirming the decree, that having regard to the circumstances, the documents must be held proved, and the plaintiff was entitled to recover possession of the land.

A tenant of land demised to him cannot on the termination of his tenancy claim compensation for buildings erected by him.

APPEAL by the defendant against a decree passed in favour of the plaintiff by Parsons, J., dated 15th January, 1894.

Suit in ejectment. The plaintiffs were the executors of the will of one Parmánandás Jivandás.

The plaint set forth that by various assignments the said Parmánandás Jivandás became the assignee of a certain lease, dated

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the 1st October, 1794, whereby the East India Company leased to one W. H. Blackford, his heirs, executors, administrators and asssigns, a certain portion of the land known by the name of Bhandarwára Hill for a term of ninety-nine years, with a covenant of renewal; that the defendant was a yearly tenant of a part of the said demised land under a lease dated 1st January, 1859, made to him by one Cánji Chatur, the predecessor in title of the said Parmánandás, at a rent of Rs. 20 per annum, which said lease contained a covenant by the defendant to quit and deliver up possession at any time on one month's notice in writing; that the plaintiffs on the 22nd September, 1891, gave the defendant notice to quit, but the defendant had not replied to the notice and had refused to give up possession.

At the hearing the plaintiff produced a counterpart (Exhibit G) of a lease dated 13th October, 1851, granted by Cánji Chatur to one Abdulla Shaik Ismáil (defendant's uncle and predecessor). This lease created a monthly tenancy as long as the rent was paid, determinable, however, by the landlord on a month's notice. It was not assignable. The only difference between that lease and the one sued on was that the latter created a yearly, and not a monthly, tenancy.

In his written statement the defendant denied that he held as yearly tenant, and alleged that the land in question had originally been let for building purposes to his predecessor on Fazendári tenure at a small quit-rent, and he submitted that he was entitled to hold the land subject only to the payment of such rent.

The defendant in his evidence said that his uncle Abdulla got possession of the land in 1848 under the following document (No. I) which, he contended, showed that Abdulla was a perpetual Fazendári tenant of the land :—

"*22nd May 1848.*

"This is to certify that Abdulla Shaik Ismáil has our permission to build his house upon our ground, part of Bhandarwára Hill, in Mazagon, No. 19, of ground rent from which he pay to us.

D. AND M. PESTONJI."

The lower Court (Parsons, J.) passed a decree for the plaintiffs, relying on the leases Exhibits G and H.

The defendant appealed, and in appeal alleged that he had erected buildings on the land at his own expense and with the written permission of the plaintiffs' predecessor in title, and he contended (*inter alia*) that in any case the plaintiffs were only entitled to possession of the land and not of such buildings. He further contended that he ought to be allowed reasonable compensation for the said buildings, or be allowed to remove them before delivering possession of the land.

Rudra and *Settlur* for the appellant (defendant):—The alleged lease is not proved—*Uggrakant Chowdhry* v. *Hurro Chunder Shickdár*(1); *Hari Chintáman Dikshit* v. *Moro Lakshman*(2). The defendant got permission to build on the land—*Ramsden* v. *Dyson*(3); *Kunhammed* v. *Nárayanan Mussad*(4); *Dattátraya Ráyáji* v. *Shridhar Náráyan*(5); *Yeshwadábái and Gopikábái* v. *Rámchandra Tukárám*(6); *Plimmer* v. *The Mayor, &c., of Wellington*(7); *Náráyan bin Rághoji* v. *Bholágir Guru Mangir*(8).

Macpherson (Acting Advocate General) and *Inverarity* for the respondents (plaintiffs).

FARRAN, C. J.:—The defendant was allowed in this case to appeal as a pauper principally to have the question of his claim to compensation upon eviction determined. The arguments have not, however, been confined to that point. The question as to whether the execution of Exhibit G and Exhibit H has been satisfactorily proved, has also been raised before us.

It arises thus. Cánji Chatur, the ancestor and predecessor in title of the plaintiff, purchased the Bhandarwára Hill in 1851. The hill is held on a ninety-nine years' renewable lease from Government. It was conveyed to Cánji Chatur on the 23rd July, 1851. At that time one Abdulla Shaik Ismáil was in occupation of a plot of land upon it. The nature of his occupation is not shown, but the defendant, who claims to be his nephew and heir, produces a document, dated the 22nd May, 1848, in the following terms:—"This is to certify that Abdulla Shaik Ismáil has our permission to build his house upon our ground, part of Bhandarwára

(1) I. L. R., 6 Calc., 209.
(2) I. L. R., 11 Bom., 89 at p. 98.
(3) L. R., 1 H. L., 129.
(4) I. L. R., 12 Mad., 320.
(5) I. L. R., 17 Bom., 736.
I. L. R., 18 Bom., 66.
(7) 9 App. Cas., 699 at p. 712.
(8) 6 Bom. H. C. Rep., A. C. J., p. 80.

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Hill, in Mazagon, No. 19, of ground rent from which he pay to us.—(Signed) D. and M. Pestonji." It is contended by the appellant that this document shows that Abdulla was at that time a perpetual Fazendári tenant of the land which he occupied. We do not think so. Exhibit No. 1 itself is a mere permission or license to build, and does not indicate what the occupant's tenure really was. Had there been no other document in existence, and had the occupants showed an uninterrupted payment of rent ever since, the inference might fairly be drawn, as it was drawn in *Yeshwadábái* v. *Rámchandra*[1] that the land had then been let for building purposes on permanent Fazendári tenure; but if we find the tenant a few years after its date accepting a lease of a less permanent character, no such inference can fairly be drawn. The equally probable inference is that the permission was given in view of a lease upon the terms subsequently accepted, or in the form common on the estate. The existence of this document does not, therefore, throw doubt upon the genuineness of that to which we shall now refer.

There are numerous documents amongst those in plaintiff's possession which purport to be counterpart leases signed by the tenants of Cánji Chattur soon after his purchase. From this it would appear that he was then engaged in taking from his tenants acknowledgments of the terms upon which they severally held. The plaintiff produces one of such counterparts which purports to be executed by Abdulla. It is written in English and bears date the 13th day of October, 1851. It purports to be attested by two witnesses, and has all the appearance of being an ancient and genuine document. The rent recoverable by it corresponds to the rent which, as appears from the books of Cánji Chatur, Abdulla paid (2 annas per square yard for 125 yards, which amount to Rs. 14-6 per annum). The only doubt which suggests itself as to its authenticity arises from its terms. It creates, in effect, a monthly tenancy to continue so long as the rent is paid, but determinable by the landlord on giving a month's notice. The lease is, in terms, not assignable. It certainly does appear strange that Abdulla Shaik should have built upon the land expecting to get, or having (for there is no evidence as to whether

(1) I. L. R., 18 Bom., 66.

the building upon the land was erected before or after the date of this lease) such an insecure tenure; but we cannot reject as unproved an ancient document simply because it is not a prudent act for a lessee to lay out money upon the tenure which it discloses. We are fully aware of the danger of treating old documents as established, merely because they are thirty years old and come from the proper custody (see *Uggrakant* v. *Hurro Chunder*[1] and *Hari Chintáman* v. *Moro Lakshman*[2]). But here circumstances point to the likelihood of Abdulla having executed some counterpart, and this is produced with all marks of genuineness upon it and according with the tenure in the books of the estate. We consider that the Division Court was fully justified in treating it as proved and acting upon it.

It appears from the books of the estate that in Samvat 1893 (1856-1857 A.D.) Abdulla is debited with Rs. 20, being the rent of 160 square yards. From this it appears that the holding was then increased. The plaintiff produces another counterpart lease (Exhibit H), dated the 1st of February, 1859, which purports to be executed by the defendant himself. This is a counterpart lease for 160 square yards. It is on a printed form and duly attested. The signature upon it is not dissimilar to that to the defendant's written statement. The increase in the holding affords a reason for a new counterpart being taken from the tenant who as heir succeeded Abdulla. The rent reserved by this lease (Rs. 20) has been paid regularly by the defendant for many years, and altogether the transaction has a genuine appearance. Having regard to the existence of the counterpart lease (Exhibit G) previously executed by Abdulla, there is nothing improbable in the defendant's having executed a new counterpart in similar terms. Those of the new lease only differ from the terms of the former one in creating a yearly, instead of a monthly, tenancy, but similarly terminable by a month's notice. The denial of the defendant, in cross-examination, of having executed Exhibit H, is half-hearted, and we think that the Judge was right in disbelieving it. We consider Exhibit H to be proved. The decree is, therefore, correct in awarding possession of the land comprised in Exhi-

(1) I. L. R., 6 Cal., 209. (2) I. L. R., 11 Bom., 89.

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bit H to the plaintiff, the notice to quit having been duly served on the defendant.

It remains to consider the defendant's claim for compensation. It was not put forward in the Court below, but it was urged in the memorandum of appeal, and counsel for the respondent offers no objection to our dealing with it on the merits. In an unreported case of *Parmánandás* v. *Ardeshir Frámji*, it was held by Farran, J., in a case exactly similar to the present, arising out of a lease upon the same estate, that the evicted tenant was not entitled to compensation for the buildings upon the land, and the same ruling was made by Starling, J., in the case of *Goverdhan* v. *Rahim Rahimtulla*, also unreported. We think that these rulings were correct.

There is, as we have stated, no evidence to show whether the buildings upon the land, which are not denied to be of a substantial character, were erected before or after the date of Exhibit G. We know of no authority for holding that a tenant who erects buildings on a demised land is entitled to compensation on being evicted on the termination of his tenancy. His right to remove such buildings, which appears to be established by the cases of *Náráyan bin Rághoji* v. *Bholagir Guru Mangir*(1) and *Premji Jivan* v. *Háji Cassum*(2), and is enacted by the Legislature in the Transfer of Property Act (IV of 1882), section 108, seems to us to negative his claim to compensation. The law laid down in the judgment of the Court in the last cited case is this: "It is well-established law in England that if a stranger builds on the land of another although believing it to be his own, the owner is entitled to recover the land with the building on it, unless there are special circumstances amounting or standing by, so as to induce the belief that the owner intends to forego his right or to an acquiescence in his building on the land—*Ramsden* v. *Dyson*(3), *Plimmer* v. *Mayor, &c., of Wellington*(4) and see *Dattátrya* v. *Shridhar*(5). This is also the law in India, with the exception that the party building on the land of another is allowed to remove the building." The same law, we think, is as applicable to a tenant building on his landlord's

(1) 6 Bom. H. C. Rep., p. 85, O. C. J.
(2) P. J., 1895, p. 107.
(3) L. R., 1 H. L., 129 at p. 170.
(4) 9 App. Cas., 699 at p. 710.
(5) I. L. R., 17 Bom., 736.

land during his tenancy as to a stranger building on the land of another. There are no special circumstances in the present case. The tenant must be taken to have known the terms of his lease as well as his landlord. And there is nothing to show that the landord "created or encouraged any hope or expectation" in the mind of the tenant by his words or conduct. The granting of the lease in the terms of the Exhibit G and Exhibit H are, we think, quite inconsistent with such an idea. Such special circumstances were found in the cases of *Kunhammed* v. *Náráyanan*[1]; *Dattátraya* v. *Shridhar* and *Yeshwadábái* v. *Rámchandra*[2] and the Courts gave effect to them. The authorities are very fully considered in the last mentioned case.

The defendant cannot call in aid the provisions of Act XI of 1855, section 4, as holding under the lease he did, he could not, nor could his predecessor in title, have *bonâ fide* believed that he held the land in permanent tenure.

The appellant's claim for compensation, therefore, fails. He has not asked to be allowed to remove his buildings. The appellant's counsel applied for leave to put in the municipal bills, which tend to show the nature and value of the structure erected on the land and one of two rent bills of 1855 and the following year wherein the rent paid in by the defendant Abdulla is called Fázendári rent. We have not thought it necessary to require those documents to be produced under section 508, clause (*b*), of the Civil Procedure Code (Act XIV of 1882) as the fact of there being a permanent structure on the land is not disputed, and the effect of the rent notes could only be considered if the whole series were put in evidence. The whole series was put in evidence in the cause of *Parmánandás* v. *Ardeshir Frámji* to which we have referred and as a whole did not suport the defendant's case.

The appeal will be dismissed. The appellant must pay the fees payable on his appeal to Government, as he has been allowed to appeal as a pauper.

Appeal dismissed.

Plaintiff's Attorney :—Mr. *K. J. Mantri.*

Defendant's Attorneys :—Messrs. *Little & Co.*

(1) I. L. R., 12 Mad., 320. (2) I. L. R., 18 Bom., 66.