APPELLATE CIVIL.

Before Sir Lawrence Jenkins, K.C.I.E., Chief Justice and Mr. Justice Heaton.

1907
October 14.

OCHHAVLAL CHANDRAPRASAD AND OTHERS (ORIGINAL PLAINTIFFS) APPELLANTS, *v.* GOPALKALYAN *alias* KESHAV (ORIGINAL DEFENDANT), RESPONDENT.*

Land Revenue Code (Bom Act V of 1879), section 84(1)—Landlord and Tenant—Annual tenancy—Determination—Notice.

An annual tenancy to which the Land Revenue Code (Bom Act V of 1879) applies cannot be determined under section 84 of the Code without the notice in writing required by that section.

SECOND appeal from the decision of D. G. Gharpure, Additional First Class Subordinate Judge of Surat with Appellate Powers, confirming the decree of Karsandas J. Desai, Subordinate Judge of Olpad.

Plaintiffs sued to recover possession of the land in suit, alleging that their predecessor had let out the land to the defendant's predecessor under a lease dated the 26th June 1848; that the defendant continued to hold the land under the terms of the original lease; that one of the conditions of the lease was that if default be made in the payment of rent on a particular day in the month of Chaitra every year it was open to the landlord to eject the defendant; that defendant having made default for four years, it was open to the plaintiffs to eject him without previous notice to quit; and that notwithstanding the default the plaintiffs had sent notices to the defendant to vacate by registered post, but he refused to accept them. Hence the suit.

* Second Appeal No. 11 of 1907.

(1) Section 84 of the Land Revenue Code (Bom. Act V of 1879) is as follows:

84. An annual tenancy shall, in the absence of proof to the contrary, be presumed to run from the end of one cultivating season to the end of the next.

The cultivating season may be presumed to end on the 31st March.

An annual tenancy shall require for its termination notice given in writing by the landlord to the tenant, or by the tenant to the landlord, at least three months before the end of the year of tenancy, at the end of which it is intimated that the tenancy is to cease. Such notice may be in the form of Schedule E or to the like effect.

The defendant admitted the lease referred to in the plaint and answered that the plaintiffs had no right to expect payment of rent on a fixed date; that according to the course of dealings between the parties rent was allowed to fall into arrears from three to four years; that he had tendered the rent for the years in suit to the plaintiffs, but they declined to accept it, and that the allegation with respect to notices to vacate was not true. The defendant further contended that he was a permanent tenant under the terms of the lease that the plaintiffs had no right to sue in ejectment; and that if the non-payment of rent on the due date be held to have worked a forfeiture of his tenancy, the same should be relieved against.

The Subordinate Judge found *inter alia* that the lease did not create the right of permanent tenancy in defendant's favour; that it was not proved that plaintiffs had refused to pass receipts for the rent tendered to them; that non-payment of rent by the defendant worked forfeiture of his tenancy; that the forfeiture can be relieved against; that he was not served with a notice to quit as required by the Transfer of Property Act and Land Revenue Code; and that the plaintiffs were not entitled to recover possession of the land. He, therefore, dismissed the suit.

On appeal by the plaintiffs one of the issues raised in appeal was:—"Whether the lower Court was right in refusing to go into the question as to whether the defendant's tenancy was terminated otherwise than by forfeiture, *i.e.*, by the deaths of both lessors and lessee, and whether apart from forfeiture plantiffs are entitled to possession on the strength of such determination." The Judge recorded a finding in the affirmative on the said issue and confirmed the decree, but expressed his opinion that no notice as required by law was proved if a finding on that point was necessary.

The plaintiffs preferred a second appeal.

L. A. Shah, for the appellants (plaintiffs):—Our predecessor in title gave the land in dispute to an ancestor of the defendant on terms which were embodied in the lease dated the 26th June 1848. At the date of the suit in the year 1904 the defendant was, in law, a tenant of the plaintiffs, holding the land as an annual

1907

OCHHAVLAL v. GOPAL.

tenant: *Vaman Shripad* v. *Maki*[1]. One of the contentions raised by the defendant was that under the terms of the original lease of 1848 he was a permanent tenant and that the plaintiffs could not sue him in ejectment, but his contention was disallowed. We submit that no notice is necessary to determine a tenancy which must be presumed to be an annual tenancy, as the defendant set up the plea of permanent tenancy: *Baba* v. *Vishvanath Joshi*[2]. This case does not refer to section 84 of the Land Revenue Code, but purports to follow the doctrine in *Vivian* v. *Moat*[3]. The reason of the Code requiring notice to determine a tenancy in such a case is that the defendant cannot be allowed to insist upon a notice to determine that which, by setting up a permanent tenancy, he says does not exist.

Section 84 of the Land Revenue Code applies where the annual tenancy is admitted to exist, and not where the fact is denied by the defendant. Setting up of a permanent tenancy in a written statement is a sufficient disclaimer of the landlord's title and renders a notice unnecessary. The ruling in *Vithu* v. *Dhondi*[4] does not accept the correctness of the ruling in *Baba* v. *Vishvanath Joshi*[2]. We submit that apart from the forfeiture clause for non-payment of rent, our claim should be allowed as notice was not necessary to determine the defendant's tenancy.

M. N. Mehta for the respondent (defendant) was not called upon.

JENKINS, C. J.—The only question that arises in this suit is whether an annual tenancy to which the Land Revenue Code applies can be determined without a notice in writing by the landlord.

It is urged before us that it can, because there was a repudiation of the landlord's title.

As a matter of fact there was, in this case, no repudiation of the relation of landlord and tenant. But apart from that we must give effect to the express provisions of the Land Revenue Code.

It has been held as a fact that there has been an annual tenancy, and section 84 of the Land Revenue Code says: "An annual

(1) (1879) 4 Bom. 424.
(2) (1883) 8 Bom. 228.
(3) (1881) 16 Ch. D. 730.
(4) (1890) 15 Bom. 407.

tenancy shall, in the absence of proof to the contrary, be presumed to run from the end of one cultivating season to the end of the next. The cultivating season may be presumed to end on the 31st March.

1907

OCHHAVLAL v. GOPAL.

"An annual tenancy shall require for its termination a notice given in writing by the landlord to the tenant, or by the tenant to the landlord, at least three months before the end of the year of tenancy, at the end of which it is intimated that the tenancy is to cease. Such notice may be in the form of Schedule E or to the like effect."

No such notice was given in this case; therefore, the annual tenancy has not been determined.

The result is that the decree must be confirmed with costs.

Decree confirmed.

G. B. R.

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Knight.

SUNDRABAI JAVJI DAGDU PARDESHI AND ANOTHER (ORIGINAL DEFENDANTS), APPELLANTS, *v.* SHIVNARAYANA RIDKARNA (ORIGINAL PLAINTIFF), RESPONDENT.*

1907 October 15

SHIVNARAYANA RIDKARNA (ORIGINAL PLAINTIFF), APPELLANT, *v.* SUNDRABAI JAVJI DAGDU PARDESHI AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

Hindu Law—Mitakshara—Mayukha—Marriage—Samskara—Marriage of a coparcener—Family purpose.

According to Hindu law a debt contracted for the marriage of a coparcener in a joint Hindu family is binding on the other coparcener as a debt contracted for a family purpose and, therefore, for the benefit of he family.

Govindarazulu Narasimham v. *Devarabhotla Venkatanarasayya* (1) dissented from.

Under the Mitakshara as well as the Mayukha the word "Samskara" ordinarily includes marriage.

* Appeals No. 755 of 1906 and No. 299 of 1907.

(1) (1903) 27 Mad. 206.