

PRIVY COUNCIL

Harihar Banerji and others

Vs.

Ramshashi Roy and others

P.C.A. No. 136 of 1917

(Lord Atkinson, CJ, Sir John Edge, Mr. Ameer Ali and Sir Walter Phillimore, Bart.
JJ)

16.7.1918

JUDGMENT

Lord Atkinson CJ.

1. This is an appeal against a decree of the High Court of Judicature at Fort William in Bengal, dated the 16th April, 1915, which dismissed an appeal from the Subordinate Court of Hooghly, dated the 19th May, 1914.
2. The action out of which the appeal has arisen is one of ejectment brought not by owners or occupiers of land against persons trespassing upon it, but by landlords of a particular piece of land against their former tenants of the same to recover possession thereof on the ground that the tenancy of those tenants has been determined by an effective notice to quit duly served.
3. Two sets of defendants have been named in the plaint, the first containing the names of seven persons named Banerji, some of whom were, and still are, members of a joint Hindu family; others were once such members and have ceased to be so. For convenience these are styled the principal defendants, and are alleged by the plaintiffs to have been their tenants from year to year of the piece of land mentioned up to the service of the aforesaid notice to quit. The second set of defendants consists of three limited companies- two milling companies, numbered 8 and 9 respectively; Andrew Yule (Limited), timber merchants, the managing agents of the two first-named companies, and numbered 10, and a firm named Amrita Lal Ghose and Sons, numbered 11. These latter defendants, Nos. 8, 9, 10 and 11, are stated to be the sub-tenants of the principal defendants, and being in the possession of the above-mentioned piece of land are made pro forma defendants. In the third paragraph of the

appellants' case it is in effect stated that the only questions in the case which have up to the present been decided are - first, the question whether, assuming that the principal defendants were the tenants of the plaintiffs' of the aforesaid piece of land from year to year, the notice to quit alleged to have been served upon them was sufficient and proper in form; and, second, the question whether it had been duly served. The Munsiff in whose Court the suit was filed decided both these questions in favour of the defendants, and on this ground dismissed the suit. His decision was reversed upon appeal by the Subordinate Judge, and it was by him ordered that the case be sent back to the lower, i.e., the Munsif's Court, with a direction to remit the suit to its original number, and to proceed to try the issues raised in the suit other than issue No. 2, and determine the suit after giving the parties due opportunity for adducing evidence.

4. The principal defendants appealed from this order to the High Court of judicature at Fort William in Bengal. The appeal was dismissed with costs, this latter Court being like the Subordinate Judge, of opinion that the notice to quit dated the 9 Assin, 1311, B. S., given by the plaintiffs had been duly served and was effective to determine the alleged tenancy from year to year of the principal defendants.

5. On the 11th July, in the year 1906, the present plaintiff No. 1 addressed the present defendant No. 10 a letter in the words and figures following :-

Messrs. Andrew Yule and Co., Calcutta.

"Dear Sirs,

"I am informed that since the 1st day of March last you are filling up and occupying our khas (*patit*) vacant land and *khal* in Char Ramkristopur, Howrah, described below. You have taken no permission from us nor have you made any arrangement with us for it. Please take notice that the land is the absolute property of myself and my co-sharers, and therefore any improvements you may make to it will belong to us absolutely. Further, you are liable to pay for your use and occupation of the land and for all damages that we may suffer thereby from the 1st March last, that is from the date from which you have been using and occupying it.

"Therefore, on behalf of myself and my co-sharers I demand from you that you do within ten days of receipt hereof make a settlement with us for the land failing which we shall take such steps as the law provides.

"Description of Land."

"All that piece of (or) parcel of *khas patit* land consisting of low land, *khal*, etc.,

measuring about 10 *cottahs* and butted and bounded as follows."

6. The boundaries are then given, but nothing turns upon them.

7. This statement that Yule's land is ten cottahs in extent is of importance. On the 23rd July in the same year plaintiff No. 1 in the present suit, as executor of his father Rammoya Roy and Srimati Adhar Roy, widow, and executrix of the same Rammoya Roy deceased, brought an action against the seven principal defendants in the present suit to recover a sum of Rs. 3-14-10 arrears of rent due to the deceased Rammoya Roy.

8. In the second paragraph of the plaint in the former suit, it is stated that the plaintiffs have been in possession of about 6 cottahs of bastu land, mentioned in the schedule, situate in the said village of Char Ramkristopur, on payment of the prescribed annual rent of 25 rupees thereof as Sarbararkars of an annual gar mourashi, thika tenant under the plaintiffs, Rs. 12-8 annas being annually paid by them separately by four instalments to the plaintiffs. The statement that the rent of Rs. 25/- a year issued out of 6 cottahs of land is undoubtedly inconsistent with their claim in the present suit, in which they allege that it issues out of a holding about 2 bighas 2½ cottahs in extent. It is not, however, more inconsistent with their present claim, than is the defense put in by the defendants inconsistent with the admission they made before the Subordinate Judge, to the effect that they were in possession of a holding belonging to the plaintiffs formerly occupied as tenant by one Ram Nidhi, Manjhi, and that this rent of Rs. 25/- issued out of the holding, whereas the defense is that the lands out of which this rent of Rs. 25/- issued is 2 bighas 2 cottahs in extent purchased henami by their predecessors and belonging to them as longstanding mourashi mokurari land.

9. Again, on the 18th February, 1908, the present appellant No. 1, executor of his late father, and the latter's widow as his executrix, addressed to the same Andrew Yule and Co.

"Messrs. Andrew Yule and Co.,

"Managing Agents, Fort William Flour Mills Company, (Limited).

Dear Sirs.

"We are informed that you have filled up a khal situate in the land specified below, and occupied the said land also, which is our khas land without our permission and without entering into any settlement with us. This land adjoins on the west a piece of land measuring 6 cottahs, for which the name of Nidhi RamManjhi is recorded in our serishta as a tenant-at-will, having no permanent

rights. We also beg to draw your attention to the letter written by one of us on the 11th July, 1906, protesting against your filling up the said khal and occupying the said land.

"Under the circumstances, unless you deliver up possession of the said piece of land more particularly described below within one month (torn) date or take a settlement from us on reasonable-terms, we shall be under (torn) painful necessity of taking such steps as we may be advised for the recovery (torn) of possession against you and such other person or persons who may claim any right to interfere with our rights and khas possession.

"We further demand from you a sum of Rs. 920 (23X4X10) rupees on account of the use and occupation of the said land and filled up khal from the 1st March, 1906, to the 31st January, 1908, and require you to pay the same to us within a month of date.

"Description of the land."

"All that piece or parcel of khas vacant land consisting of low land khal, etc., measuring about 10 cottahs or more, situate in our Zemindari of Char Ramkrishtopur, sub-district of Howrah and Tana Shibpur, and butted and bounded as follows."

10. The boundaries are then set out.

11. This letter, treating Yule and Co., as trespassers instead of sub-tenants of the principal defendants, as they are treated in the present suit, may have, with the other inconsistencies already mentioned, induced, and their Lordships think most probably did induce, the principal defendants to refuse to be content with the decision of the Subordinate Judge and High Court, and to prefer the present appeal to this Board on two points, one of which the proper service of the notice, is technical and unmeritorious. It is not pretended that the plaintiffs are *estopped* by these proceedings and documents. But the strangest argument, that could well be addressed to any legal tribunal, has been founded upon them and pressed on behalf of the principal defendants. It is this that the plaintiffs deliberately and for some indirect object narrowed their notice to quit to what they knew was a small portion of the holding for which their tenants paid them rent, in order that, having got possession of this portion, they might treat the companies occupying the remainder of the holding as trespassers. If they knew the law, as they must be assumed to do, they must have been well aware that a notice to quit calling upon the tenants of a holding to quit a portion of it is absolutely bad, and they must have known also that this design could not be accomplished unless the ejectment founded on the notice was so framed as to obtain

secure possession of the portion mentioned in the notice and no more, and that the action could be at once defeated by the tenants by proof that the contents of their holding were more than the part named.

12. It is desirable therefore to refer to the pleadings to see how the respective parties framed their claims and defences, in order to discover whether the former were fashioned so as to carry out the alleged knavish design. In paragraph 5 of the plaintiffs' plaint the nature of the holding of which the claim to recover possession is described. It is a jamma of land bearing an annual rental of Rs. 25/- in the name of Nidhi Ram alias Ram Nidhi Manjhi, recorded in the serishta of the plaintiffs, for which the principal defendants paid the annual rent of Rs. 25/- and of which they were in possession. So far the description of the holding is reasonably plain and clear, and if it is stopped there it is difficult to suppose that any person of ordinary intelligence reading it would not at once see it was the possession of that jamma in its entirety - nothing more and nothing less - which was claimed. Any difficulty which exists arises from the statement of the contents of this jamma. The plaintiffs mention 6 cottahs but it is not quite clear whether by mention of that area the plaintiffs mean to assert that this was in fact its area at the date of the filing of the plaint, or merely that it is its area as recorded in the plaintiffs' serishta. If the holding be one of char lands it may well be that its area would be considerably augmented by accretion in the long course of sixty years during which it is alleged to have been in the tenancy of the defendants and their predecessors.

13. The description, however, does not stop there. In the same paragraph it is further stated that in the suit already mentioned brought by plaintiffs Nos. 1 and 2 to recover arrears of rent the principal defendant had stated that the whole quantity of 2 bighas 2½ cottahs was comprised in the jamma in respect of which the annual rent of Rs. 25 was paid. In the schedules these different estimates of descriptions of the contents of the jamma are repeated but whatever its actual contents it is stated to be the land recorded in the plaintiffs' serishta in the name of Ram Nidhi Manjhi, subject to an annual payment of Rs. 25 In the sixth paragraph of the plaint it is averred that the formal defendants are in the possession of the said lands, that is, the lands comprised in the jamma, in the immediately preceding paragraph mentioned as monthly tenants under the principal defendants. This paragraph refutes absolutely the suggestion that all the plaintiffs seek to recover is the 6 cottahs of the jamma in the occupation of Amrita Ghose and Sons. What is sought to be recovered is all the lands occupied by all the pro forma defendants, and not merely the portion occupied by any one of them.

The contents of the succeeding paragraph lead to the same conclusion. It appears to their Lordships that in the face of this pleading it is perfectly plain that what the plaintiffs in this suit seek to recover is possession not of a jamma 6 cottahs in extent, nor yet a portion 6 cottahs in extent, of a larger jamma, but the whole jamma described as formerly held by Ram Nidhi Manjhi, for which he and the principal defendant after him paid an annual rent of Rs. 25/- and which is in actual occupation of the formal defendants.

14. The written statements filed by the principal and pro forma defendants suggest the same conclusion. From paragraph 12 of the latter it appears that in the month of May 1900 the principal defendants entered into an agreement with the pro forma defendants to grant to the latter a lease of 131/3 cottahs of low land forming part of the "land in suit". The part cannot be equal to or greater than the whole; 131/3 cottahs cannot be a portion of 6 cottahs; and thus the lands in suit, in the opinion of the formal defendants, cannot be a mere part of the jamma 6 acres in area. In this statement it is also averred that the defendant No. 8, the Monarch Flour Mills Company, on the faith of this promise of the lease, immediately began to raise the level of the land demised to them and to raise buildings upon it.

15. It is further averred in the statement that the defendant No. 8 filled up at an expense of about Rs. 3,000 a khal immediately north of the promises of defendant No. 9, and that in May 1905, the principal defendants claiming the lands so made by this filling up, the defendant No. 9 agreed with them to rent a piece of land 17 acres in extent situate east of the plot 131/3 acres in extent already mentioned; that the said defendant No. 9, relying on these promises to grant a lease to them, erected buildings upon the said lands and paid rent to the principal defendants in respect of them; that the principal defendants evaded executing these leases though tendered to them for execution, and ultimately refused to execute them ; and that defendants Nos. 8 and 9 were about to institute a suit against the principal defendants for specific performance of their agreement to grant the leases when the news of the institution of the present suit reached them.

16. This written statement was filed on the 22nd December, 1911, three days after the filing of the written statement of the principal defendants of course, these latter people are not bound by the averments contained in the written statement of their sub-tenants.

17. The written statement of the formal defendants is that in their view, at all events, the present suit is not brought to recover merely possession of the 6 cottahs in the

occupation of defendant No. 11, Ghose and Sons; but is brought for the recovery of the possession of lands which they themselves have promised to lease. In paragraph 9 of their statement it is averred that the land in suit is not the 6 cottahs held by Ghose and Sons but 2 bighas 2½ cottahs held by them in one plot, not two plots.

18. and they repeat ad nauseam in various forms the statement that lands in suit are not confined to a jamma of 6 cottahs bearing an annual rent of Rs. 25/- that they never had possession of a jote of 6 cottahs, nor ever paid rent in respect of such a jote that the lands in suit are not confined in a jote jamma of 6 cottahs at an annual rent of Rs. 25/-, alleged by the plaintiffs in their plaint to be recorded in the name of Rain NidhiManjhi; and further that if there be any such jote of 6 cottahs recorded in the plaintiffs' serishta, the principal defendants never had any connection with it or interest in it.

19. In paragraph 12 of the written statement they repeated the assertion already mentioned that the 2 bighas 2½ cottahs for which they pay Rs. 25/- is ancestral property acquired in the way already described, but not a particle of evidence was given by the defendants at the hearing to sustain any one of the averments contained in this paragraph. Nor was any evidence whatever then given to sustain the accusation that the plaintiffs harboured the stupid and fraudulent design attributed to them in framing their notice to quit in its actual form. The form of their pleading repels the idea. This is a vital matter, because of the principles upon which, according to the authorities, notices to quit containing errors honestly but mistakenly or inadvertently made or to be construed. These principles would be entirely inapplicable to inaccuracies deliberately inserted for fraudulent purposes. The principles that the notice to quit should be construed *ut res magis valeat pereat* applicable in the first class of cases could not be applied to the second. There is no reason why if the plaintiffs before they served this notice to quit had obtained more full and accurate information as to the precise facts touching this holding for which the principal defendants paid them this annual rent of Rs. 25, they should not have availed themselves of it and embodied it in their notice to quit.

20. In their Lordships' view there is nothing whatever to show that the plaintiffs were actuated by a desire to play any trick, or effect any fraudulent purpose in connection with this notice to quit or the ejectment suit consequent upon it, or to show they did not serve the notice and institute the suit in the honest desire to exercise legitimately the rights which the law conferred upon them in reference to the possession and enjoyment of their own property.

21. If this were a case arising in England the English authorities would therefore be applicable. It has not been suggested, and could not, their Lordships think, be successfully contended, that the principles they lay down are not equally applicable to cases arising in India. They establish that notices to quit, though not strictly accurate or consistent in the statements embodied in them, may still be good and effective in law; that the test of their sufficiency is not what they would mean to a stranger ignorant of all the facts and circumstances touching the holding to which they purport to refer, but what they would mean to tenants presumably conversant with all those facts and circumstances, and, further, that they are to be construed not with a desire to find faults in them which would render them defective but to be construed *ut res magis talent quam pereat*. To take a few of these authorities out of many to illustrate these principles.

22. In *Doe d Huntingtower v. Culliford*^l the defendant went into possession of a house and an acre of land in the parish of Itchester on the 4th August, 1821 as tenant to the plaintiff. On the 28th September, 1822, the plaintiff served upon the defendant a notice, dated the 27th September, 1822, to quit this house and this land at Lady Day next or at the end of your current year. Lady Day next would be the 25th March, 1823, and the current year of the tenancy would be the 4th August, 1823, but acting on the above mentioned principles it was held to be a good notice to quit on Lady Day, 1823, i.e., the 25th March, 1823. Abbott, C.J., in delivering judgment said :-

"There is one rule of construction in cases of this nature which is no less sound than ancient, namely to give such a sense to ambiguous words as will effectuate the intention of the parties. Applying that rule to this case, it appears to me the words at the end of your current year' may be understood to mean the end of the current year ending at the ensuing Lady Day. The words, I think, are plainly applicable to the current year Lady Day, 1823."

23. Bayley, J., said :-

"We are to look at the intention of the landlord. When general language is used which is open to doubt, the rule is to make it sensible, not insensible. The state of the defendant's holding shows it to be clear that the landlord did not mean the year ending Michaelmas Day. He could not intend to give notice to quit in two days, because that would be no notice whatever. By mentioning Lady Day next it is clear he meant to give a six months' notice, or such notice as the law requires. He intended to give an effective notice, and it is quite sufficient if the tenant understands what is meant."

24. In *Doe d. Williams v. Smith*² the tenant, who held lands under a demise originally from May, 1832 to the 2nd February, 1833, and held certain buildings from May 1852 to May 1833, retained possession after February and May, 1833, without any express contract; on the 22nd October, 1833, the landlord served a notice to quit and deliver up possession of all the buildings and the land at the expiration of half a year from the delivery of the notice,

"or such other time or times as your present year's holding of or in the said premises or any part thereof respectively shall expire after the expiration of half a year from the delivery of this notice."

25. Lord Denman, C. J., in delivering judgment said :-

"I think the notice was well enough. It is admitted that it would be good from May, 1834. The half-year would expire in April, 1834. It would therefore not be good notice for the 2nd February, 1834, but I think that, although the word 'present' is used, the notice may be referred to 2nd February, 1835, which was after the expiration of the half-year, and that there was no danger of the tenant being misled."

26. Liitledale, J., concurred for the same reasons, saying :-

"This is certainly a lame and inaccurate notice; but, such as it is, we must endeavour to give it a rational interpretation."

27. Patterson, J., said :-

"It is not required that a notice should be worded with the accuracy of a plea. This is not drawn with strict precision, but I think it is sufficiently clear."

28. That case was followed and approved of in *Wride v. Dyer*³,

29. The case of *Doe v. Archer*⁴ is very applicable to the present case. There a farm was leased for twenty-one years at a rent of £180 per annum, consisting, as described in the lease, of Town Barton and its several parcels described by name at a rent of £83, other closes named at rents of £5 5s and £11 and the Shippon Barton and several parcels described by name at £86 reserving to either party power to determine the lease at the end of fourteen years on giving two years' previous notice. It was held that a notice by the landlord to the tenant to "quit Town Barton, andc., agreeably to terms of the covenant between us on the expiration of the fourteen years of your term" was sufficient.

30. Lord Ellenborough in delivering judgment said :-

"The landlord must have intended to give such a notice to quit as the lease reserved to him the liberty of giving and not a void notice to quit a part only, and so the notice in question must have been understood by the tenant.

"The notice to quit Town Barton, where the mansion was, meant the Town Barton cum sociis, especially with reference to the lease, which only gave him power to determine the tenancy as to the whole, of what was let together."

31. Le Blanc, J., said :-

"There being no power under the lease to determine the tenancy as to part only, the notice to quit could have no operation at all unless taken, as it must have been intended to apply to the whole."

32. Bayley, J., said :-

"We are to construe a notice to quit in such a way ut res magis valeat quam pereat."

33. In order to judge of what the notice to quit in this case conveyed to those of the principal defendants upon whom it was served, it is necessary by examination of the evidence given at the trial before the Munsif to ascertain what were the material facts in reference to the connection of those defendants with the lands in suit. Three witnesses were examined on behalf of the plaintiffs, namely, Ramshashi Roy, Suresh Chandra Chatterji, and Hira Lal Kar. The second of these gave no material evidence upon the point now under consideration. One witness, and only one, namely, Jyotish Chandra Banerji, was examined on behalf of the defendants. Ramshashi Roy proved, amongst other things, that the plaintiffs in the suit are the maliks of two towzi, Nos. 3994 and 3994 A, acquired by purchase, of which the latter belonged to the witness and his mother, and the former belonged to Guru Das and his cousins; that the Banerjis were the tenants of the lands in suit; that he accepted rent from them; that Nidhi Ram was the tenant; that somehow or other the Banerjis got the lands from Nidhi Ram; that they paid rent to the plaintiffs for it, and their rents were accepted; that the Banerjis were not trespassers; that Nidhi Ram was treated in his (witness's) serishta as dead; that the land in the possession of the principal defendants was included within the boundaries given in the notice to quit; that the actual occupiers of the lands were Messrs. Andrew Yule and Co. and Amrita Lal Ghose; and that he, the witness, only came to know in May or June 1900 that the Banerjis had undertenants who paid them rent.

34. In reply to the Court he said the Banerjis (defendants) are not trespassers; they are tenants in the sense that they pay him rent; that he accepts rent from them as

sarbararkars, meaning thereby that they were occupying the place of tenants; that he has been accepting rent from them since 1900; he believed his uncle (the owner of towzi 3994) also receives rent from them; that he did not know when they acquired their interest in the lands in suit; that he treated them as tenants to the extent of receiving rent from them as sarbararkars. On being further cross-examined by counsel, he said that the quality of land in the possession of defendant No. 11 was 6 cottahs; that there are no pucca structures upon it; the quantity of land in the possession of defendants Nos. 8 to 10, he said, was 30 cottahs, the total quantity 2 bighas; that before 1900 the lands were khal (a closed channel) and patit; that to the east of the 2 bighas odd there is no public pathway, but a private pathway, 6 to 10 feet wide, used by Andrew Yule and Co. solely; that to the east of that pathway lie the lands of the Port Commissioners; that these latter lands formerly belonged to his (witness's predecessors, and were acquired by the Commissioners; that he did not include in the plaint this eastern pathway within the disputed land.

35. The witness Hira Lal Kar stated that he was gomasta for all the plaintiff's. He proved that he received rent from the Banerjis for the plaintiffs and gave receipts for it, eight of which were apparently produced, proved and marked Ex. A and Exs. B (1) to B (7). They have not been printed in the Appendix, as they ought to have been since they may describe the holding in respect of which the rent was paid and throw light upon the point in controversy.

36. Well, in the face of this evidence, it is not surprising that when the case came before the Subordinate Judge it is stated in his judgment that it was admitted on both sides that the defendants' i.e., the Banerjis' tenancy consisted of the holding of Ram Nidhi Manjhi. It is not suggested that the knowledge of this fact was recently acquired by the principal defendants, and the sufficiency or insufficiency of the notice to quit must, therefore, be determined having regard to the fact that admittedly the principal defendants were, to their own knowledge, tenants of Ramnidhi Manjhi. The fact that in their written statement they don't deny this fact, but studiously evade admitting it, while they have given no evidence whatever to disprove it, all suggest that they were well aware who their predecessor in occupation was. and it is almost impossible to believe that the counsel for the principal defendants would have omitted to confine his clients' admission to their state of knowledge subsequent to the service of the notice to quit if he could have honestly and truthfully done so.

37. Turning to the contents of the notice to quit, the material part of it is :-

"You are informed by this notice that Char Ramkristopur Pergunnah Boro, recorded in towzi Nos. 3994 and 3994 A in the Collectorate of district Hooghly, within station Shibpur, is our zamindari. The bastu land, bounded as below within the said Char, is land, bearing a yearly jumma of Rs. 25/-, standing in the name of the late Nidhi Ram, alias Ram Nidhi Manjhi. You have been in possession of the said land on payment of rent at the said rate and taking dakhilas in the name of the said Nidhi Ram Manjhi as thika tenants-at-will of the said one jumma only under us. Now it being necessary for us to take khas possession of all the lands comprised in the said jumma, you are informed by this notice that you should vacate that land by removing the huts, andc., that exist on the said land on or before the last day of the month of Chaitra of the current year 1317 B.S. We shall take khas possession of all the lands comprised in the said jumma on the expiry of the said fixed time. In case we do not get khas possession of the said land on the expiry of the said time fixed, we shall take khas possession of that land by instituting a suit in proper Court against you and you shall be liable for all damages.

"The 9th Assin, 1317 B.S.

"Schedule.

"1 (one) plot of bastu land, about 6 cottahs in area situate in village Char Ramkristopur within station Sibpur, porgunnah Boro (6 cottahs)

"Boundaries.

"North :- Ramkristopur Ghat Road.

"West:- Jamai land of the late Thakurdas Banerji.

"South :- Jamai land of the late Bhuban Mohan Banerji.

"East :- Land included in the said towzi."

38. The question is what must that notice have conveyed to an ordinary reader much less to tenants who were aware, as the principal defendants have admitted, that they held Ram Nidi Manjhi's holding.

39. The notice begins by standing that the bastu lands bounded as below within the char of Ramkrishtopur, are lands bearing yearly jumma of Rs. 25/- standing in the name of Nidhi Ram alias Ram Nidhi Manjhi. It is then averred that the principal defendants have been in possession of these lands on payment of rent at the aforesaid rate, taking dakhilas in the name of the said Nidhi Ram Manjhi, as thika tenant-at-will, of " the said one jumma only under the plaintiffs." It is then averred that it is necessary for the plaintiffs to take khas possession of all the lands comprised in the jumma already mentioned. The principal defendants are then required to vacate that

land, that is, all the land comprised in the aforesaid jumma, before a day named, and they are informed that on the expiry of that time the plaintiffs will take possession of all the lands comprised in the aforesaid jumma.

40. If the boundaries alone were added it could not, their Lordships think, be successfully contended that the meaning of this notice to any ordinary reader was not that possession of the entire jumma in the tenancy of the principal defendants, which has stood in the name of Ram Nidhi Manjhi, and for which he and they paid a rent of Rs. 25 per annum, should be delivered up to the plaintiffs. To tenants who, like the principal defendants, were admittedly in possession of the entire jumma and paid this rent, that must have been clear to demonstration, but it is contended that all this clearness is obscured, and this certainly rendered 'doubtful by the statement in the schedule that the lands the possessions of which are to be delivered up are one plot of bastu lands 6 cottahs in extent.

41. The principal defendants knew perfectly well that a plot of 6 cottahs in extent is only a small fraction, one-sixth or one-seventh, of the lands in the entire jumma. They must presumably have known the law that a notice requiring a tenant to quit only a small portion of the holding of which he was tenant was bad and ineffective; but the presence of these words 6 cottahs in the schedule, it was, in effect, contended, reverses all the presumption such as would apply in English cases and necessitates that the landlord shall be presumed to have intended to serve a notice bad and ineffectual to his own knowledge rather than a valid and effectual one, and that the notice itself should be construed *ut res magis per eat quam valeat* instead of the contrary. No argument has been addressed to their Lordships and no authority produced to show that the principles of the above recited English cases are inapplicable to Indian cases. From the very nature of a notice to quit, which is merely the formal expression of the landlord's will that the tenancy of his tenant shall terminate, it would prima facie appear that they are applicable. In addition it may well be that the description of the lands of the jumma as bastu lands may refer to their condition as originally held by Ram Nidhi Manjhi, and not to their condition after the defendants Nos. 8 and 9 had, during the year subsequent to the year 1905, built, pucca buildings upon them, and defendant No. 11 had erected huts upon his 6 cottahs.

42. In their Lordships' view the erroneous statement of the contents of the jumma does not predominate over the description given of it in the earlier portion of the notice to quit. They have not the slightest doubt that the principal defendants were perfectly well aware that the notice required the defendants, as the plaintiffs desired and

intended that it should, to quit and deliver up possession of the entire jumma for which they for years paid the rent of Rs. 25. If anything additional were needed to convince one that, this was so, it would be the evidence of the only witness examined for the defendants. He says, not a word about the principal defendants and their predecessor having from time immemorial had ancestral mokurari rights in the property containing 2 bighas and 2½ cottahs bearing an annual rental of Rs. 25, not a word to the effect that although he got, as he admits, the notice to quit he did not understand that it referred to the whole jumma for which Nidhi Ram formerly and the principal defendants in succession to him paid this rent of Rs. 25 per annum. Their Lordships are, therefore, clearly of opinion that the notice was a good notice to quit this last-named jumma in its entirety, whatever its area may be. What its actual area is can be determined at the trial, and the possession of that area can be recovered in these proceedings.

43. Next and lastly as to the service of the notice to quit. The 106th section of the Transfer of Property Act, 1882, only requires that such a notice should be rendered or delivered to the party intended to be bound by it either personally or to one of his family or servants at his residence, or if such tender or delivery be not practicable, affixed to a conspicuous part of the property. The personal tender or delivery may take place anywhere; the vicarious tender or delivery must take place at the residence of the person intended to be bound by the notice. Well in the case of joint tenants, each is intended to be bound, and it has long ago been decided that service of a notice to quit upon one joint tenant is prima facie evidence that it has reached the other joint tenants. *Doe d. Macartney v. Crick*⁵, *Doe d. Bradford v. Watkins*⁶, and *Pollok v. Kelley*⁷,

44. It was proved and found that defendants Nos. 5, 6 and 7 are members of a joint Hindu family, and that of these No. 5 was duly served with a duplicate of the notice to quit. The mode of service adopted was this: Hira Lal Kar, the gomashtha of all the plaintiffs, who knew all the defendants and their addresses, sent to each by registered letter addressed to them at these addresses duplicates of the notice to quit signed by all the plaintiffs. For these notices he received receipts on the registration of them. and the peon of the Post Office, who, the defendants' only witness admitted, knew all their houses, got from all of them receipts for the letters when delivered. These receipts were produced, one purporting to be signed on behalf of Srimati Panchkawri Debi, the *guardian-ad-item* of the minor defendant No. 7, by a person signing on behalf of the addressee with the initials F. G. B., another addressed to Babu Nula Kumar Banerji, the minor purporting to be signed in something the same way; a third addressed to

Babu Nurendra Nath Banerji, defendant No. 6, purporting to be signed for the addressee in the same way; a fourth addressed to Fakir Chandra Banerji, defendant No. 5, signed by the addressee; a fifth addressed to Babu Harihar Banerji, defendant No. 1 signed by the addressee; a sixth addressed to Babu Jyotish Chandra Banerji, defendant No. 4, examined as a witness on behalf of his co-defendants, signed by himself; a seventh addressed to Babu Narayan Chandra Banerji, defendant 1 No. 2, purporting to be signed on his behalf by Jogendra Nath Dey; and an eighth addressed to Babu Paran Chandra Banerji, defendant No.3, purporting to be signed on the addressee's behalf by the same person, Jogendra Nath Dey. The defendant No. 4 in his cross-examination stated he did not know a person named Jogendra Nath Dey, but, strange to say, after the signatures of five of the principal defendants, including Narayan Chandra Banerji, Paran Chandra Banerji, and Jyotish Chandra Banerji, to their written statement filed in the suit of the plaintiffs' to recover rent instituted in July 1906, already referred to, appears the statement, "Satisfied from the statement of Jogendra Nath Dey." That was followed by something which is now illegible. It probably was the signature of some official before whom the defendants or their signatures to the written statement were identified or verified.

45. Hira Lal Kar stated that he left all the notices with Babu Prabodh, a man 30 years of age, son of defendant No. 2, who lives in his father's house. There would seem to be some error in the print of this witness's evidence on this point, as the witness is represented as having said he gave all the notices, not one notice, to Babu Prabodh. The Subordinate Judge found that this was good service on Narayan, the defendant No. 2. The Munsif held there was no proof of the service of the notice to quit on any of the defendants other than those numbered 1, 4, and 5. He seemed to be of opinion that the registered letter must be presumed to have been delivered to the person who signed on behalf of the addressee the receipt of it, but not to the addressee himself in the first instance or at all, and that as there was no proof that the persons other than the addressees who so signed were the duly authorised agents of the addressees to receive these notices the proof of service was defective. Service of a notice upon or delivery to such an agent would be good service or delivery to the principal though in fact the notice was destroyed by the agent and never was seen or heard of by the principal; (*Tanham v. Nicholson*⁸ but it is an entire mistake to suppose that the addressee must sign the receipt for a registered letter himself, or that he cannot do so by the hand of another person, or that if another person does sign it on the addressee's behalf the presumption is that it never was delivered to the addressee himself mediately or immediately. For instance, if a servant in the addressee's house saw a notice handed in

by the postman carried to the addressee, and handed to him that servant could certify that it was delivered to his master and could, if requested by the master, sign the receipt on the latter's behalf, though he was not the agent of the master authorised to take delivery on his, the master's behalf.

46. The latest, clearest, and most conclusive authority upon the question of the sufficiency of the service or delivery of a notice to quit by post is probably the case of *Gresham House Estate Co. v. Rossa Grande Gold Mining Co.*,⁹. There the defendants, who were sued for rent, contended that they had, before the rent accrued due, terminated their tenancy by a notice to quit enclosed in a letter which they had put into the post correctly addressed to the plaintiffs, and which, if delivered in due course, would have been received in time to determine the tenancy. The plaintiffs called evidence to show the letter had never been received. The learned Judge presiding at the trial directed the jury that a notice to quit enclosed in a letter sent through the post was prima facie evidence that it had been received, and left to the jury the question whether it had, in fact, been received or not. The jury found it had been received. On a motion for new trial on the ground of misdirection, the Court, consisting of Cockburn, C. J., Blackburn Mellor and Hannen, JJ., held that if a letter properly directed, containing a notice to quit, is proved to have been put into the post office, it is presumed that the letter reached its destination at the proper time according to the regular course of business of the post office, and was received by the person to whom it was addressed. That presumption would appear to their Lordships to apply with still greater force to letters which the sender has taken the precaution to register, and is not rebutted but strengthened by the fact that a receipt for the letter is produced signed on behalf of the addressee by some person other than the addressee himself.

47. The only one of the defendants, who appeared as a witness, admitted he had received through the post office the notice addressed to him. None of the other defendants appeared as witnesses, to deny that they had received the notices properly addressed to them and properly posted. In their Lordships' view the evidence of delivery of the notices to quit to all the principal defendants was, under these circumstances, adequately and sufficiently proved, and constituted good service of them within the meaning of section 106 of "the Transfer of Property Act, 1882." They are therefore of opinion that the appeal fails upon both the points raised for decision and should be dismissed, and will humbly advise His Majesty accordingly. As they think that the erroneous mode in which the plaintiffs shaped their claims in the years 1906, 1907, and 1908, in the letters and litigation already referred to may have misled

the defendants and brought about this appeal, they think the parties should be left to abide their own costs incurred in it.

Appeal dismissed.

Cases Referred.

1. [1824] 4 Dow and Ry. (K. B.) 248
2. [1836] 5 Ad. and E. 350 : 6 N. and M. 829 : 5 L.J.K.B.216 : 2 H. and W. 176 : 44 R.R. 442
3. [1900] 1 Q.B. 23 : 81 L.T.453 : 69 L.J.Q.B. 17 : 64 J.P.118 : 16 T.L.R. 23 : 48 W.R. 73.
4. [1811] 14 East 245 : 12 R.R. 509
5. [1805] 5 Esp. 196 : 8 R.R. 848
6. [1806] 7 East 551 : 8 R.R.670 : 3 Smith 517
7. [1856] 6 C.L.R. 367.
8. [1872] 5 H.L. 561 : 6 Ir.C.L.R.188
9. [1870] W.N. 119