PATNA HIGH COURT

Secretary of State

Vs

Babu Beni Prasad Sahu

(Wort and Dhavle, JJ.)

01.03.1937

JUDGMENT

Wort, J.

1. This appeal by the plaintiff the Secretary of State, arises out of an action in ejectment with which was joined an alternative claim for the settlement of a fair rent. The land originally consisted of several plots' but which are now amalgamated into holding No. 363. The plots were first Nos. 580 and 581 which equal plot No. 280 and being the subject-matter of two unregistered leases must be treated on the footing of oral agreements The other plots which were the subject-matter of three registered leases dated respectively January 22, 1918, for the term "until the new settlement of the Palamau Government estate was made" at an annual rent of Re. 1-6; the second lease (Ex. 1-b) dated September 29, 1920, being for a term of 30 years or until the new settlement of the town of Daltonganj was made (whichever is less) at an annual rent of Rs. 5-14; and the third lease (Ex. 1-c) of the same date and for the same period at a rental of Re. 1-3. As regards plots Nos. 580 and 581, which are now known as plot No. 280 under the oral agreement, the plaintiff's claim has failed so far as ejectment is concerned, but the Judge has assessed the rent at Rs. 3 4. With regard to the plots, the subject matter of the three written leases, the plaintiff's claim succeeded and the Court held the plaintiff entitled to eject the defendants failing execution by them of new leases at an annual rent of Rs. 27. As regards plot No. 280 (equals Nos. 580 and 581) three could be no doubt that the Court had no jurisdiction to assess rent and thus make a bargain between the parties. With regard to these plots which are the subject-matter of the leases, it is contended that other considerations apply with regard to this part of the relief claimed, and with that contention I propose to deal later.

2. We are not concerned in this case with the situation of the plots in dispute in the town of Daltonganj as this was a matter which was to be considered only with regard to the value of the land and the assessment of fair rent. The facts relating to these plots are as follows: Plots No. 580 and 581 (now known as. plot No. 280) were purchased from one Eda Sheikh. Eda Sheikh was recorded in respect of this land in Mr. Sunder's settlement which commenced in 1894 and

concluded in 1896. Plot No. 580 was purchased from the son of Eda Sheikh on May 10, 1910, and plot No. 581 was purchased in a Court sale in execution of a decree in 1903. Plots Nos. 233, 230 and 271 were the subject-matter of the lease dated September 29, 19-0 (Ex. 1-B), and the present survey plot No. 505 was the subject-matter of the lease (Ex. 1C) of the same date. The plots dealt with by the lease (Ex. 1-B), September 1920, were also the subject-matter of a lease dated July 6, 1914, to defendant's father Srikishun Sahu, and it was after Srikishun's death that the fresh lease of September 1920 was granted. The Judge in the Court below has held, contrary to the defendant's contention, that the Chota Nagpur Tenancy Act did not apply but that the matter was governed by the Transfer of Property Act, and in regard to plot No. 280 (equals Nos. 580 and 581) he has held that the defendants have got a permanent tenancy drawing the inference to that effect from the circumstances of the case. With regard to the others, he has held that the plaintiff having terminated the tenancies by a notice to quit, is entitled to eject the defendant. These plots were the subject-matter of enhancement of rent at the time of Mr. Sunder's settlement. It is to be noticed in this case that Mr. Sinha on behalf of the Government and the learned Advocate on behalf of the defendant agree that the case is governed by the law of landlord and tenant, either under the Chota Nagpur Tenancy Act or otherwise and although khas mahal property is not to be determined by any considerations of the revenue law.

3. The first, contention advanced by the defendant is that the defendant has occupancy rights under the provisions of the Chota Nagpur Tenancy Act. There was no point raised by the defendant in his written statement in this connection and ho issue was settled. The argument is based almost entirely on the fact that in Mr. Sunder's Settlement Record, either the defendant, or his predecessor-in-title was recorded as an occupancy tenant. It was the contention of the defendant that as his father Srikishun Sahu held some tanr lands at Sahpur in which makai crops were grown, and holding admittedly homestead land at Daltonganj as ancillary to or in conjunction with agricultural tenancy, he would have rights of occupancy under Section 78, Chota Nagpur Tenancy Act. There is, in my judgment, no evidence of this; and, as the learned Judge has pointed out, even assuming that Srikishun had some tanr and in Sahpur that would not be sufficient to constitute him an agriculturist, holding his homestead land in Daltonganj as an agriculturist. The position shortly is this. It is admitted in all these cases that the Record of Rights has not the statutory presumption of correctness; at most it could be admitted in evidence under Section 33, Evidence Act, Mr. Sunder being dead, and therefore could only be used as some evidence in the case of the facts which it states. There is nothing else to support the defendant's contention in this regard, and there having been no issue raised in the Court below, and the plaintiff not having had an opportunity to adduce evidence as to the status of the defendant or his predecessors, it would be unjust in the circumstances to hold that the record which has no presumption of correctness established the plaintiff's contention. Furthermore, it has always been the case of both parties that the land was homestead or building land. That being so, the position of the defendant is to be judged apart from the Chota Nagpur Tenancy Act. The Judge has held that these tenancies are governed by the Transfer of Property Act. This, as I have pointed out in other appeals, is clearly an error, for the Crown Grants Act (XV of 1895) applies.

4. As regards plot No. 280 (equals Nos. 580 and 581), the learned Judge has held, as I have already stated, that the tenancy was a permanent one and seems to have come to that conclusion on the footing that there were permanent structures on the land to the knowledge of the landlord and relies upon the decision in Prosunno Coomar Chatterjee v. Jadunath Bysack 10 CLR 25. That decision, however, does not support the Judge's conclusion. There is no case here of the land having been held at a rent which was not varied and the mere fact that buildings have been erected on the land with the knowledge of the landlord is not in itself sufficient to raise that presumption: *see Beni Ram v. Kundan Lal*[1] a decision already quoted. The question therefore arises whether the notice served on the defendant on September LI, 1928, calling upon him to give up possession on March 21, 1929, was valid. At common law, applied as the rule of justice, equity and good conscience, the tenancy was from year to year which is to be inferred from the reservation of a yearly rent in the absence of other facts and would require six months notice expiring on the anniversary of the commencement of the tenancy. There is no dispute as regards the date upon which the tenancy commenced as there is no evidence on that point. And, as no question is raised on this point, we must assume that a notice expiring on March 31, which was the end of the financial year was valid at any rate so far as its expiration is concerned, and as from the judgment of the Court below it would appear that the notice on the defendant on September 11, 1928, would give the defendant fully six months, the notice would be valid.

5. As regards the other plots, the subject-matter of the three leases, the position is different. At the conclusion of the argument in this case the question arose as to the meaning of the word "settlement" as used in the three leases (Exs. 1-a, 1-b and 1-c). The words used in the first lease are. "hereby leases to you until a 'new settlement' of the Palamau Government Estate is made" and the question was whether the expression 'settlement' referred to settlement of revenue or whether it referred to the action of Government acting as landlord in letting out their property. This point arose as it was argued that the leases were void for uncertainty. I have no doubt, however, that the meaning of the word 'settlement' as used in these leases referred to a new letting of the estate by Government and did not refer to a new settlement of land revenue. In any event it cannot be argued that the time of the new settlement was ascertained and the term of the lease, therefore, certain. The facts are these : Mr. Sunder's settlement was a settlement for 15 years. In 1918 that 15 years had elapsed and even supposing that the word 'settlement' was referable to a settlement of land, revenue that new settlement of land revenue, could be made by a notification at any date. There was nothing to prevent Government issuing a notice the day after the lease was entered into and the clause, therefore, was in the circumstances tantamount to the landlord saying that the lease was to subsist at his will. Supposing the word 'settlement' had reference to a new letting by Government the same result would be obtained. On the plain construction of the document the lease was a tenancy-at-will. Clause 12 of the lease provided that:On the expiry of the term of this lease- you shall, if you have duly observed all the conditions thereof, be entitled to its renewal on such terms as may be agreed upon.

6. It is contended that this, on its proper construction, gives an absolute right of renewal to the

defendant at a reasonable rent which may be determined by the Court. If on its true construction the lease is no more than a tenancy-at-will the right to renewal, if such there be, is worthless; the tenant would be entitled to another tenancy at-will which is no right at all as the tenant could be ejected at once. Indeed there can be no such right of renewal in the case of a tenancy-at-will. The contention that the condition 'on such terms as may be agreed upon' on its true construction means at a reasonable rent and that the Court has jurisdiction in such a case as this to say what is a reasonable rent in my judgment is not sustainable. The terms are plain 'as agreed upon' and certainly cannot be construed as meaning that the parties have agreed that rent should be reasonable and that it is only for the Court to say what that rent should be. Such a construction would be substituting the decision of the Court for the agreement of the parties. As regards the lease dated September 29, 1920 (Ex. 1-B), the same considerations apply as to the term, but the Clause relating to renewal is different. Clause 14 provides:If three months prior to expiration of the said term the lessee shall notify the Deputy Commissioner that he is desirous of taking a new lease of the said premises and shall have duly observed and performed all the terms and conditions aforesaid, he shall be entitled to a new lease for such terms and at such rent enhanced or otherwise and on such terms and conditions as the Deputy Commissioner or in the event of disagreement the Commissioner may deem proper.

7. It is not suggested in the circumstances that the notification of 1926 was insufficient to prevent the defendant giving three months notice of his intention to take new leases and even if it might be held that the Deputy Commissioner has fixed the terms of that lease, it seems to me that the condition precedent has not been followed in this case. Neither the notice required from the tenant nor the reference to the Commissioner has been made, and therefore, the landlord is entitled to reenter. As regards the third of these leases, dated September 29, 1920 (Ex. 1-0) the term is the same and the considerations which apply to Ex. 1-B also apply to this case in the matter of renewal. In all cases, therefore, the plaintiff was entitled to eject the defendant in the case of plot No. 280 as the tenant had a lease from year to year, and in the case of the three leases in writing as a tenancy-at will and that in all cases valid notices to quit had been served. I should add with regard to plot No. 280 the fact that the plaintiff gave a longer notice to quit then was necessary makes no difference to the rights of the parties. I would set aside the judgment of the Court below as regards the fixing of rent and allow the appeal with regard to the claim for ejectment in the case of plot No. 280 and affirm the decision of the Court below entitling the plaintiff to ejectment with ragard to the land, the subject-matter of the leases. The appellant is entitled to his costs throughout. The cross-objection is dismissed.

Dhavle, J.

8. I agree. As regards plots Nos. 850 and 851 of Sunder's Survey (making up plot No. 280 of the new Survey) the lower Court holds that there have been several transfers of these lands, that they contained permanent pucca structures and that therefore, it must be presumed that the defendant has got a permanent interest in the plots. The appellant's claim for ejectment was, therefore,

disallowed and the rent payable was assessed at Rs. 3-4-0. As regards the presumption of permanency the learned Subordinate Judge purports to follow the authority in *Prosunno Coomar Chatterjee v. Jadunath Bysack*[3] in which it was observed:No doubt, if land is let for building pucca houses upon it, or if the tenant with the knowledge of landlord does in fact lay out large sums upon it in holdings...that fact coupled with a long continued enjoyment of the property by the tenant or his predecessors-in-title, might justify any Court in presuming a permanent grant, especially if the origin of the tenancy could not be ascertained.

9. This observation would not have been applied by the learned Subordinate Judge to this case if even such circumstances had not been overlooked as that the pucca structure on the plots, the Thakurbari, was erected only about 20 years ago by the defendant's father and not by the tenants who were in possession of the land at the time of Mr. Sunder's Survey. Plot No, 850 was recorded at that time in the name of Thakuri Barhi carrying an old rent of 3 annas 6 pies which Mr. Sunder raised to 7 annas. The learned Subordinate Judge says that it was purchased in the Court sale in 1903, but the jamabandi register shows a mutation of 1908 at an enhanced rate of Re. 1-1-0 in favour apparently of a predecessor-in-title of defendant's father. Langtu Sahu D. W. No. 7 deposes to a somewhat different series of transfers before the land came to defendant's father. Be that as it may, there is nothing to show that Thakuri had any pucca structure upon the land before it was sold out or that the land had been let out to him for building pucca houses on it, to say nothing of the fact that there is no good indication of any long continued enjoyment of the property by Thakuri or his predecessors-in-title. Plot No. 851 is recorded as in the possession of Edu Sheikh with an old rent of 2 annas 6 pies which Mr. Sunder raised to 10 annas. Defendant's father purchased it from Edu's son, Dost Muhammad in 1910 and obtained his mutation in 1912 at an" ephanced rent of Re. 1. The sale deed describes the house as kuteha. The learned Subordinate Judge has paid no attention not only to the nature of the old structures but also to the repeated enhancements of the rent. As regards the presumption of permanency, Garth, C.J. himself whose observation from Prosvnno Coomar Chatterjee's case 10 CLR 25 has been cited above had pointed out in Prosunn *Kumaree Debea v. Rutton Bepary*[3] why it cannot be presumed in this country that a tenancy is permanent merely because the tenant has erected a dwelling house upon it. The whole matter was recently considered by Rankin, C.J in *Kamal Kumar Dutta v. Nandlal Dube*[4] after the ruling of the Privy Council in *Dhanna Mal v. Moti Sugar*[5] that the question whether a tenancy was permanent or precarious is in such cases a legal inference from facts and net itself a question of fact. Long possession on the part of the tenant together with abstention on the part of the landlord to enhance the rent was considered in Kamal Kumar's case 56 C 738 : 116 Ind. Cas. 378 : AIR 1929 Cal 37 : 33 CWN 211--a case where the absence of permanent masonry structures upon the land was explicable by the circumstance that the defendant was a labourer--insufficient to justify a legal inference of permanency and in the present case there are the repeated enhancements of rent which are unquestioned. The finding of permanency on the grounds given by the lower Court cannot, therefore, be supported.

10. It has been contended on behalf of the respondent that there should, in such circumstances, be an inference of permanency with a variable rent. But such an inference, even if otherwise

justifiable, would be unmeaning where, as in the present case, the enhancement of rent is not referable to any specific provision of the law or to any scale laid down by the parties themselves. If the enhancement is to be at the discretion of the landlord, the defendant will either have to accept it or give the tenancy up, so that as pointed out by my learned brother during the argument--permanency will become an idle expression. It has also been contended on behalf of the respondent that he had an occupancy right in these and the other five plots in suit. Reliance is placed in the first instance upon the entries in Sunder's khatians of the then tenants as dakhilkars, the entry in the case of plot No. 1359 being dakhilkar maqabasat. But Sunder's khatians do not carry any such specified presumption of correctness as is attached by statute to Record of Rights under Tenancy Act. Mr. Sunder, it is clear, issued khatians in one and the same form to non-agricultural as well as agricultural tenants, and applied the classification of the Bengal Tenancy Act to a tract of country governed not by that Act, but by the Chota Nagpur Landlord and Tenant Procedure Act, 1879. The occupancy right was doubtless recorded because Government had decided that it should be allowed and recorded in the case of all raiyats paying direct to Government or to the farmer.

11. But the question would still remain whether the men with whom we are concerned were raiyats. It is true that though Daltonganj was a municipality, there may have been raiyati rights within it: *Syed Hussan All v. Gobind Lal Basalc*[6] But there is no evidence that Thakuri and Edu, whom Mr. Sunder found in possession of plots Nos. 850 and 851 with houses on them, had ever cultivated these plots, or taken them for purposes of cultivation and then erected houses on them with the leave or acquiescence of the landlord. There was also no such provision of the law in force at that time as we now find in Section 78, Chota Nagpur Tenancy Act, nor is there any indication in the record that Thakuri and Edu had any raiyati land anywhere else. Upon, this Mr. Das has contended that there was no definition or description of a raiyat as meaning primarily a person who has acquired a right to hold land for the purpose of cultivation (such as we now find in Section 6, Chota Nagpur Tenancy Act) in force in Chota Nagpur prior to the amendment of the Chota Nagpur Landlord and Tenant Procedure Act, 1879, by Bengal Act V of 1903, and that the Bengal General Clauses Act, No. V of 1867, (which I see was extended to Lohardaga by a Notification of 1881 under Section 3, Scheduled District Act, XIV of 1874) had provided that "the word 'land' shall include houses and buildings...unless where there are words to exclude them". The argument is that under the laws then in force occupancy rights could be acquired in building land no less than in agricultural land, as the Chota Nagpur Landlord and Tenant Procedure Act, 1879, gave a right of occupancy to every raiyat who has cultivated or held land for a period of twelve years". Much the same ingenious argument was advanced in Mohur *Ali Khan Pathan v. Ram Rattan Sen*[7] where it was held that the similar Section in Bengal Act, VIII of 1869 referred to the occupation of land which is the subject of agricultural or horticultural cultivation or used for purposes incidental thereto, and does not include land exclusively used1 for dwelling houses, buildings, etc. The Landlord and Tenant Procedure Act, 1879, replaced the Bengal Rent Act, (Act X of 1859), in this area, and under this latter Act it had been repeatedly held (see for in stance *Ramdhun Khan v. Haradun Puramanick*[8] that the occupation which gives

an occupancy right does not include occupation:the main object of which is the dwelling house itself, and where the cultivation of the soil, if any there be, is entirely subordinate to that.

12. The Landlord and Tenant Procedure Act reproduced Section 6, Bengal Rent Act, 1359, without any change which is material for present purposes. Assuming that the word 'land' in Section 6 of the Act included building sites and houses and buildings, the occupancy right could only accrue to a raiyat, and it had been settled under the law previously in force, that the word raiyat meant an actual bona fide cultivator in the sense of deriving his profits from the produce of the land directly: Kalee Charan Singh v. Ameerooddeen 9 WR 579. It was of course possible for a riayat, instead of cultivating the land, to erect stops thereon and receive the profit from the shopkeepers presumably with the consent of the landlord or in accordance with a local custom--and keeps his right of occupancy, as was held in *Khajuranissa Begum v. Ahmad Reza*[9] a case referred to by Mr. Das; but, as I have already shown, this has no application to cases where the land was occupied exclusively by buildings and the man was not a raiyat. The essence of an occupancy right is security of tenure of agricultural land as long as the land is not misused and rent is paid subject to enhancement, in Chota Nagpur, not by contract but by order from the Court of the Deputy Commissioner. The Chota Nagpur Tenancy Act of 1908 contains no provision for enhancement of rent of tenants of non-agricultural land, and it is significant that in replacing by this Act the Landlord and Tenant Procedure Act, the Legislature made no provision for enhancement in such cases, while by Section 16 it saved occupancy rights already acquired by raiyat. The dealings of the parties with the land--the repeated enhancements--also point to the absence of an occupany right, though it is obvious that much stress must not be laid on this circumstance.

13. There is a further difficulty in the way of the respondent. Even if it be assumed that men like Thakuri and Edu had occupancy rights in the building plots recorded in their names in Sunder's khatians, these rights could not have passed to their successors. It is true that Edu'a holding only was transferred in 1910 after the amendment of the tenancy law by Bengal Act, V of 1903 which made the transfer by a riayat of his right in his holding altogether invalid, and that we do not know definitely when exactly Thakuri parted with his holding. Bat even before the Amending Act of 1903 occupancy rigts were not transferable without the consent of the landlord, save by local custom which had to be established by the tenant of his transferee. That was the law under the Bengal Rent Act, X of 1859, and it was not changed by the Landlord and Tenant Procedure Act of 1879. Since the Act of 1903, transfers of occupancy rights with or without the consent of the landlord are impossible in Chota Nagpur, and if the transferee is recognized by the landlord and the transferor does not assert his rights under the Tenancy Act, the transferee's tenancy becomes a new tenancy altogether, which is what seems to have happened to the defendant or his father in respect not only of plot No. 851 but also of plot No. 850 especially as the rent was enhanced. Defendant's father thus held these plots tin his own leases. These leases have not been put in evidence, apparently because (as we know from the connected case dealt with in First Appeal No. 28 of 1933) the learned Subordinate Judge was of opinion that the Crown Grants

Act, 1895, was inapplicable to such cases and that therefore unregistered leases were inadmissible in evidence. This was erroneous: see *Secretary of State v. Nistarini Annie Mitter*[10] The present was, therefore, not really a case where the origin of the tenancy of plots Nos. 850 and 851 can be said to be unknown, and as Mr. Sunder's was a 15 years' settlement, a presumption or inference of permanency would be all the more violent in the circumstances.

14. Mr. Das has also endeavoured to support the defendant's occupancy right on the basis of Section 78, Ghota Nagpur Tenancy Act. Defendant's father was recorded as dakhilkar in Sunder's Settlement in respect of plots Nos. 879 and 1157 (corresponding to new plots Nos. 230 and 271). Each of these plots was entered in the khatian as a makan; it is not pretended that defendant's father had taken either of them for raiyati cultivation or that he had any such cultivation in Daltongaj. He lived in these houses at one time and carried on the profession of mahajani. His acquisition of the other plots in suit, especially plots Nos. 8£0 and 851 on which he built a Thakurbari, will therefore not be within Section 78. In the old plots, Nos. 879 and 1157 he could have no raiyati interest on the principle of Section 78 at the time of Mr. Sunder's Settlement because (even if he carried on agriculture anywhere) there was no provision in the Landlord and Tenant Procedure Act, 1879, which was then in force making the incidents of the tenancy of a homestead held otherwise than as part of a raiyat's holding identical with those applicable to land held by a raiyar. Section 78 is sometimes loosely described as creating an occupancy right in a homestead held by a raiyat otherwise than as part of his holdings as a raiyat. But as was pointed out in *Bishnath Singh v. Bibi Ayesha1*[11] the Section was enacted as a protection to the cultivating tenant, so that he may not be turned out of his homestead as long as he holds his raiyati land. If he parts with the raiyati land, his tenancy of the homestead becomes subject to the ordinary incidents and does not suffice to keep up his status as a raiyat. There was no suggestion of any occupancy right in the written statement of the defendant, whose case was that his father and his vendors had taken settlement of the lands in suit for the purpose of constructing permanent pucca structures thereon. It was, however, brought out in the cross-examination of plaintiff's mutation clerk, P.W. No. 1, that defendant's father "had raiyati land in Shahpur" a Mauza just across the river. When he had this land and whether he continued to have it after the introduction of the Chota Nagpur Tenancy Act, 1908, was not brought out by the defendant. In his own evidence the defendant said nothing about any raiyati cultivation. In the cross-examination Gulab Chand Sahu, defence witness No. 6, who stated that defendant's father had a house, bagieha and bari at Shahpur, it came out that:In the bari adjoining his house, makai used to be grown. Near the bagieha he had some taw land in which makai used to be grown.

15. This again leaves an uncertainty about time so as to make it impossible to bold that the incidents of the tenancy of the two old and five recently acquired homestead plots in Daltonganj by defendant's father are to be regulated as laid down in Section 78, Chota Nagpur Tenancy Act, to say nothing of the fact that the homestead plots in Daltonganj were plainly not ancillary to the raiyati tenancy, if any, in Shahpur. That Section 78 must be so restricted seems clear, and was actually held in *Purusottom Mahesri v. Panchanan Mazumdar*[12] The Legislature could not

possibly have meant that though a raiyat may hold one homestead otherwise than as part of his holding as a raiyat and use it for carrying on his cultivation, the incidents of his tenancy of some other homestead held somewhere else for other business shall be regulated by the provisions of the Act applicable to land held by a raiyat. Mr. Das has cited Pulin *Chandra Daw v. Abu Bakkar Naskar*[13] *which followed Sukh Lal v. Prosanna Kumar*[14] But we are not concerned in the preseat case with the point decided in these cases. Finally, the question whether defendant or his father held any raiyati land at all was not properly raised in the pleadings nor investigated below and it is, therefore, impossible to give the respondent the benefit of Section 78 of the Act. Though the learned Subordinate Judge found that the defendant has a permanent interest in plots Nos. 850 and 851, he proceeded to assess a fair rent "according to the suggestion of both parties" so that "an opportunity be given to the defendant by way of equitable relief against forfeiture". The learned Judge took the plaintiff's Pleader to concede in his argument that the plaintiff has no intention to turn out tenants who are ready and willing to pay the rent to be fixed by the Court.

16. He was plainly in error. The plaintiff's case was tint if the Court should hold that the occupier had acquired a permanent tenancy right and was not liable to be evicted, then it should be declared that he was liable to pay the rent as already assessed by the plaintiff. The lower Court assessed rents for the various holdings in suit, and in respect of four new plots Corresponding to five old plots) other than the Thakurbari site, ordered the defendant to execute a lease on a rent of Rs. 27 within two months, failing which the plaintiff was to recover khan possession. Within two months of the judgment of the lower Court the defendant filed a petition stating that without prejudice to his right of preferring an appeal or cross-appeal he was willing to execute the lease, and praving that a form of lease be given to him. When this matter came on for hearing, it was found that the plaintiff was no" ready to accept a lease from the defendant on the rent fixed by the Court. Plainly the plaintiff could have conceded nothing. The assessment made by the Court was eitirely without jurisdiction: see Nistarini's case 6 Pat. 446 : 101 Iad. Cas 209 : AIR 1927 Pat 319(Supra), already referred to. There was also no forfeiture involved in putting an end to a tenancy which was not permanent and could at most be treated as a tenancy from year to year. The alternative prayer of the plaintiff was that a rent of Rs. 132-10-0 a year be declared payable "for a period of 30 years or till the next settlement", and the learned Judge below completely missed the limitation, quite irrespective of the question of jurisdiction.

17. Jurisdiction was also wanting as regards the assessment of the other plots in suit, for which there were registered leases executed by the defendant. Old plot No. 881 (corresponding to new plot No. 233 in part) was settled with the defendant under Ex. 1(a) in 1918 "until a new settlement of the Palamau Government Estate." It-has been contended on behalf of the respondent that this meant a settlement under the Chota Nagpur Tenancy Act. The plaintiff's interpretation was what is called re-settlement in Rule 28(8) of the Government Estates Manual, Whether or not such a settlement or re-settlement means a settlement of land revenue, and whether or not it is referable to any specific statutory provision--points which were not raised in the evidence and regarding which there is much uncertainty on the record--it is clear that the term

of the lease depended merely upon the volition of the plaintiff. Mr. Bunder's Settlement which has been referred to in several places as land revenue settlement was completed in 896 and had a currency of fifteen years a period which had expired long before the execution of Ex. 1(a). A fresh settlement was thus overdue, and there was nothing to prevent the plaintiff from making it as soon after Ex. 1 (a) as he liked. Old ptots Nos. 879 and 1157 (corresponding to new plots Nos. 230 and 271) together with old plot No. 882 (corresponding to new plot No. 233 in parti purchased by defendant's father from Tilakram in 1908 were settled with defendant's father by Ex. 1 in 1914. But that lease was re-placed in 1920 by another lease Ex. 1(b), executed by the defendant himself. This lease is in the same form as another lease Ex. 1(c) executed by the defendant on the same date in respect of old plot No. 1359 (corresponding to new plot No. 505). Both the leases were "for the term of thirty years or until the new Settlement of town Daltonganj is made, whichever is less"; For the reasons already indicated the term of these leases was dependant merely on the plaintiff's will. Defendant was, therefore, only a tenant-at-will under these leases.

18. Mr. Das has urged that these tenancies have not been properly terminated because renewal was of their essence. Clause 12 of Ex. 1(a) provides for "renewal on such terms as may be agreed upon--the land being liable to enhancement at such renewal". Plaintiff was willing to give the defendant a fresh lease on the rent he proposed, but this was not acceptable to the defendant. No rent was, therefore, agreed upon and it is impossible to read the renewal Clause like that in *New Beerbhoom Coal Co. Ltd. v. Bularam Mahatd*[15] cited by Mr. Das so as to give jurist diction to the. Court to fix a rent. The renewal clause in Exs. 1(b) and 1(c) is even less useful to the defendant because it requires the tenant, three months prior to the expiration of the said term, to notify the Deputy Commissioner that he is desirous of taking the new lease. Mr. Das has himself contended that this is bad because of the uncertainty of the term. The proceedings of the Settlement were conducted with detailed publicity, and the defendant could have notified his intention to the Deputy Commissioner if he had chosen to do so when the plaintiff made a survey of the town under a public notification obviously as a preliminary to the "Settlement". Apart, therefore, from the uncertainty of the term the renewal Clause is of no assistance to the defendant who did not notify his intention as required by it. Mr. Das has also urged that the notice to quto was invalid because the year of the tenancy was not the financial year. So far as plots Nos. 850 and 851 are concerned, we have no lease before and the implication in the plaint that the year of tenancy was the financial year has not been met by any appropriate counter-suggestion. In Ismail Khan Mahomed v. Jaigun Bibi 27 C 570 : 4 CWN 210 there was a tenancy created by a document of the 19th of Chait but rent had all along been paid according to the old Bengali year, and it was held that the year the tenancy would be the ordinary Bengali year. That, like the present, was a case not governed by the Transfer of Property Act. As regards the other plots, the registered leases were executed one on January 22, 1918, and two on September 29, 19i0, and rent was to be paid annually on or before January 15. Mr. Das has cited Benoy *Krishna Das v. Salsiccioni*[16] in support of the proposition that the date of payment of the rent will not affect the operation of Section 110, Transler of Property Act. It is not necessary to pronounce upon this

contention, though I may perhaps refer to the ruling in *Arunachella Chettiar v. Ramiah Naian*[17] In the first place the matter is governed not by the Transfer of Property Act but by the Crown Grants Act, and the principle of justice, equity and good conscience, and secondly, the leases only create tenancies-at will, so that the lessee was not entitled to a formal notice, a demand for possession, such as the notice actually given amounts to, being sufficient.

19. Plaintiff might, however, perhaps consider whether the form of lease for use in what is intended to be a model zamindary should not be improved, giving the lessee something more than a mere tenancy-at-will and making clearer provision regarding the year of tenancy and the notice necessary. I would allow the appeal with costs of both Courts, and decree the suit iii terms of the first two prayers made in the plaint. The cross-objection of the respondent is dismissed.

Cases Referred.

121 A 496 : 26 IA 58 AWN 1906, 245 : 3 CWN 502 : 1 BLR 400 : 7 Sar. 523 (PC)
210 C.L.R 25
33 C 696 : 1 CLR 577
456 C 738 : 116 Ind. Cas. 378 : AIR 1929 Cal 37 : 33 CWN 211
58 Lah. 573 : 101 Ind. Cas. 355 : AIR 1927 PC 102 : 54 IA 178 : 52 MLJ 663 : 29 Bom. LR 870 : 31 CWN 677 : (1927) IWN 481 (PC)
69 C.W.N. 141
721 W.R. 400
812 WR 404 : 9 BLR
911 WR 8 : 8 BLR 166n
106 Pat. 446 : 101 Iad. Cas 209 : AIR 1927 Pat 319
1111 PLT 107 : 120 Ind. Cas. 477 : AIR 1930 Pat. 224 : Ind. Rul. (1930) Pat.45
1242 CLJ 197 : 90 Ind. Cas. 805 : AIR 1926 Cal. 373
1340 CWN 599 : 163 Ind. Cas. 406 : AIR 1936 Cal. 565 : 9 RC 22
1444 CLJ 302 : 96 Ind. Cas. 541 : AIR 1926 Cal. 1199
157 IA 107 : 5 C 932 : 4 Sar. 145 (PC)
1660 C 389 : 141 Ind. Cas. 514 : AIR 1932 PC 279 : 59 IA 414 : 9 OWN 892 : 63 MLJ 685 : (1932) MWN 1237 : 16 RD 539 : 37 CWN 1 : 36 LW 747 : 56 CLJ 319 : 35 Bom. LR 6 : Ind. Rul. (1933) PC 22 : (1933) ALJ 423 (PC)
1730 M 109 : 16 MLJ 533