

(1956) 09 PAT CK 0004
In the Patna High Court
Case No : A.F.O.D. No. 487 of 1947

Kanwar Lal Thapper

APPELLANT

Vs

Raja Bahadur Kamakhya Narayan Singh and Another

RESPONDENT

Date of Decision : 11-09-1956

Acts Referred:

Contract Act, 1872 — Section 74
Evidence Act, 1872 — Section 101, 102, 103, 104
Transfer of Property Act, 1882 — Section 105, 111

Citation : AIR 1957 Patna 350

Hon'ble Judges : Rai, J; Misra, J

Bench : Division Bench

Advocate : L.K. Choudhury and N.P. Agarwala, for the Appellant; Govt. Advocate, Shambhu Prasad Singh and Indu Sekhar Prasad Sinha, for the Respondent

Final Decision : Allowed

Judgement

Misra, J.—The plaintiff, Raja Bahadur Kamkhya Narayan Singh, the proprietor of the Ramgarh Raj, instituted the suit, out of which the present appeal arises, for ejectment of the defendants from the lands demised as set but in schedule A attached to the plaint. The plaintiff also prayed for damages to the extent of Rs. 11,920/- up to the date of the suit as well as further damages from that day till delivery of possession at the rate of Rs. 500/- per day.

The case of the plaintiff was that the defendant Kunwar Lal Thapper obtained a lease from him in respect of certain lands situate in village Sugia and Barokakhap within the Ramgarh Raj of which the plaintiff happened to be the proprietor with all the underground minerals in the two villages, Sugia and Barakakhap. The demise in favour of the defendant was made by a registered lease, dated the 21st May, 1944, executed by the parties. According to this lease the term of occupation of the defendant was to begin from the 22nd day of December, 1943, and was to last till the 21st day of December, 1945,

The lease was thus to last for a period of two years, but it was subject to certain covenants. A sum of Rs. 13,500/- was paid as Salami and the lessee had contracted to pay a sum of Rs. 1200/-per annum as rent of the leasehold. The lessee was thus entitled to work the mines in the demised land. The mines were coal mines. It was, however, stated further that according to covenant No. 1 of the aforesaid lease, the lessor was authorised to cancel the Indenture at his option any time even during the pendency of the lease with seven days notice to the lessee after which the lessee was obliged to vacate the mines, its beds and seams of coal, as also the lands on which coal might have been stocked.

The salami paid, however, was not to be refunded. The lessee was entitled to a refund of rent paid by him proportionate to the period he would be debarred from working the mines. In the event of the lessee's refusing to quit possession on the expiry of the week mentioned in the notice on any ground whatsoever, the lessee would be liable to pay damages to the lessor at the rate of Rs. 500/- per day for the period the lessor would remain out of possession. In giving such a notice the lessor would not be bound to assign any reason whatsoever for the same. It was alleged further that the plaintiff sent a notice by registered post with acknowledgment due on the 27th July, 1944, calling upon the defendant to vacate possession in terms of the covenant, but in spite of receipt of such notice, the defendant refused to vacate the demised lands. The plaintiff accordingly claimed the sum of Rs. 11,920/- as per schedule B attached to the plaint from the date of the expiry of the seven days" notice up to the date of suit, which was the 2nd September, 1944. He also claimed damages at the same rate, that is to say, Rs, 500/- per day from the date of the suit till the date of delivery of possession.

2. In the written statement filed by the defendant it was alleged that he had obtained the lease of the lands and its beds and seams of coal referred to in the schedule to the plaint for the term of two years from 22nd December, 1943, as mentioned in the plaint, but the terms and covenants were agreed upon in a personal interview of the defendant with the plaintiff on 26-11-1943 which was confirmed by the letter dated 29-11-1943, from the Chief Manager of the plaintiff to the defendant.

There was no reference either at the personal interview or in the letter of the Chief Manager to the fact that the lessor would have the option, to cancel the lease at any time or of any such covenant as the plaintiff relied upon to give him the cause of action for the suit. After giving a detailed account of the documents relating to the negotiation between the parties, the written statement proceeded to narrate that the lease date the 21st May, 1944, was signed by the lessee under a misrepresentation as he was given to understand that it was a mere copy of the previous lease between the parties which was on the basis of the agreement dated 26-11-43.

In fact he was authorised by a letter dated 29-11-43 by the plaintiff to start, work by the 7th December, 1943, but when the defendant went to the mines to

take possession, he was informed by the then lessee that his term would not expire till 20-12-43 and that he was not willing to let the defendant start the work before the expiration of the said lease, it was also pleaded that the defendant was not the lessee but only acted as an Agent for Messrs K. C. Thappar and Brothers of Burdawan Compound, Ranchi, to the knowledge of the plaintiff, and though the lease was executed in his name, he had no personal interest in the property in suit.

Messrs K, C. Thappar and Brothers were all along in possession and they were necessary parties to the suit. After that the plaintiff, however, thought it advisable to implead Messrs K. C. Thappar and Brothers, a registered firm with its Head Office at Burdawan Compound, Ranchi, as a defendant. The defendant accordingly claimed that the plaintiff was not entitled to any of the reliefs prayed for by him.

3. The learned Subordinate Judge of Hazaribagh, who tried the suit, negatived the plea of the defendants that they had entered into the contract of lease under a mis-representation. He held further that the defendant No. 1 was liable to ejectment in terms of the covenant incorporated in the lease itself and the plaintiff having given the necessary one week's notice the defendant had no right to continue to work the mines in the demised lands thereafter. He held also that the plaintiff was entitled to damages, but as to the actual amount, he did not accept the plaintiff's claim of damages at the rate of Rs. 500 per day as stipulated in the lease which he held to be in the nature of a penalty.

Considering the circumstances of the case, he came to the conclusion, however, that u/s 74. of the Contract Act he would assess reasonable damages, and according to him, the plaintiff would be entitled to a sum of Rs. 33/- per day from the date of the expiry of the notice. Having calculated the figure from the 9th August 1944, the day of expiry of the notice, to the 2nd September, 1944, when the suit was instituted, he found the plaintiff's claim to be for a total sum of Rs. 825/-. In terms of the covenant of the lease he also gave proportionate deduction in the sum of Rs. 1,200/-, which was paid as advance rent for one year by the defendant to the plaintiff, for the period that he was not able to work the mines, which came to a sum of Rs. 480/-.

A sum of Rs. 1007/- was also deducted as earnest money and thus a decree for Rs. 245/- by way of damages was passed in favour of the plaintiff from the 9th August, 1944, to the 2nd September, 1944. He held, however, that the plaintiff would be entitled to recover damages at the rate of Rs. 33/- per day up to the date of delivery of possession together, with costs.

4. Mr. L. K. Choudhury, who appears in support of the appeal preferred by the defendant to this Court, contended that on a proper construction of the lease it should have been held that it was a lease for two years definite and that the clause regarding the right of the plaintiff to cancel the lease any time at his option should have been read as giving the lessor that right after the expiry of

the definite term of two years and not during the pendency of the period. The deed of indenture (Ext. 1) contains the following relevant recitals:

"Whereas the lessor is seized and possessed of the lands described in the schedule, below in absolute proprietary or zamindari right, the mineral rights thereof belonging exclusively to the lessor and whereas as the said lands described in schedule below are included within the concession area of the prospecting Licence of which an extension was granted by the lessor to Messrs Bokaro and Ramgarh Limited of Calcutta by registered Indenture dated the 12th March, 1942, but the licensee aforesaid has not as yet taken any mining lease over the lands described in schedule below and whereas the lessee has offered to take a temporary lease for a period of two years only over the lands described in schedule below on the terms and conditions expressly set-forth below and has also offered to pay a salami of Rs. 13,500 (thirteen thousand five hundred) and an annual rent of Rs. 1,200 (one thousand two hundred) to the lessor and the lessor has accepted the offer. Now in consideration of the said offer and acceptance this Indenture witnesseth that in consideration of the salami of Rs. 13,500 (thirteen thousand five hundred) only and the rent of Rs. 1,200 (one thousand two hundred) only per annum and the lessee's covenants hereinafter reserved and contained and specially covenant No. 1 which the lessee has accepted and agreed to after full consideration the true meaning and import thereof, the lessor doth hereby demise into the lessee the mines, pits, beds, veins and seams of coal situate, lying and being in or under the lands mentioned and described in the schedule hereunder written together with the liberties, powers and privileges at all times during the term hereby granted to search for, dig mine and work the said mines and to win and get therefrom all coal intended to be hereby demised into the lessee from the 22nd day of December One thousand nine hundred and fortythree for the term of two years thence ensuing that is up to 21st day of December one thousand nine hundred and fortyfive yielding and paying to the lessor in advance on the 21st day of December each year the sum of Rs. 1,200 (one thousand two hundred) per annum as mentioned above and in. case of default also interest at 12 1/2 per cent per annum and the lessee doth hereby covenant with the lessor that :

"1. Whenever the lessor shall desire to cancel this Indenture he shall serve the lessee with a notice cancelling the same and the lessee will have to vacate the mines, pits, beds and seams of coal as also the lands on which coal may have been stocked by him or any one on his behalf within seven days from the receipt of the said notice in which case he will be entitled to a refund of only the rent paid by him proportionate to the period he will be debarred from working. Salami will however in no case be refunded.

Provided further and it Is hereby expressly agreed and stipulated by the lessee that in the event of the lessee's refusing to quit possession on the expiry of the week mentioned in the notice on the ground that the week's notice is insufficient or on any other ground in that case the lessee will be liable to pay damages to

the lessor at the rate of Rs. 500 (Rupees five hundred) per day for the period the lessor will remain out of possession. In giving such notice the lessor will not be bound to assign any reason whatsoever for the same."

It is unnecessary to refer to other covenants which are of a minor character and it is the proper construction of this part of the lease which is the moot point between the parties. Mr. Choudhury stressed the words

"whereas the lessee has offered to take a temporary lease for a period of two years only over the lands described in schedule belowfrom the 22nd day of December one thousand nine hundred and fortythree for the term of two years thence ensuing that is up to 21st day of December one thousand nine hundred and fortyfive and contended that although covenant No. 1 gave an option to the lessor to cancel the lease whenever he desired this option could not be exercised within a period of two years between the 22nd December, 1943 to 21st December, 1945.

He invited us to take into consideration the circumstances of this case in order to gather the intention of the parties inasmuch as the lessor accepted and the lessee paid a heavy amount of Rs. 13,500/- as salami with the stipulation of annual rental of Rs. 1,200/- and a period of two years was also definitely fixed in the lease itself. The covenant in the lease giving an unrestricted option to cancel the lease to the lessor must, therefore, be held to be void and as being against public policy and plainly an unconscionable bargain, The mining lease in the nature of it Implies investment of certain amount of capital and labour to work the mine and, the so-called covenant therefore, in the lease giving the lessor the power to cancel the lease must be held to be in the nature of an unconscionable bargain.

It would also be opposed to public policy, Learned counsel for the respondents, however, contended that if the defendant's case of mis-representation failed,--as it was bound to fall in the circumstances of the case, there was no reason why the defendant should not be bound by the terms of the contract into which they entered with their eyes open and which contract was in accordance with the general practice prevailing in Ramgarh Raj with regard to other similar leases. His contention was that covenant No. 1 in the lease would have the effect of making the lessee a tenant-at-will and. he was, therefore, liable to eviction whenever the lessor desired to do so,

5. Learned Counsel for the respondent relied upon a decision in the case of Khuda Bakhsh v. Sheo Din ILR 8 All 405 (A). This was a case in which the plaintiff, Khuda Bakhsh, sought for possession of a piece of land and for rent on the foot of two sarkhats or kabuliats executed in his favour by the defendants. The documents were, however, unregistered. The first document mentioned the yearly rent payable by the defendant to the plaintiff and also stated as follows:-

"If the owner of the land wishes to have it vacated, he shall give me fifteen days" notice, and I will vacate without making objection: if I delay in vacating the land,

the owner can realise, by recourse of law, rent from me at the rate of Rs. 8/- per annum..... .."

The second sarkhat after reciting that the executants had taken the land from the plaintiff on a yearly rent specified for six years during which this lease was to last, stated:

"..... .and if the said Shaikh wishes to have the land vacated within the said term, he shall first give us fifteen days" notice, and we will vacate it without objection".

The two courts below had held that the sarkhats were not admissible in evidence as they required registration u/s 17(4) of the Registration Act (Act VIII of 1871). The two sarkhats thus created no right. The defendants, however, had continued to be in possession and had thus acquired the right of easement to keep their charahi or a place for feeding the cattle. It may be stated that under the terms of the first lease the lessee had agreed to remain in possession on a yearly rental of Rs. 4/- and four seers of milk and the specific purpose mentioned therein was that the lease was taken for tethering cattle and for a place to live in.

under the second lease also, the specific purpose recited in the lease was that the lessees were in need of the land for tethering cattle and that they had taken the lease in front of the door of Khuda Bakhsh, the plaintiff, owned and possessed by him. The only difference, therefore, between, the first lease and the second lease was that the first lease was for indefinite term whereas the second lease was for a period of six years, but with the covenant that the defendant would vacate possession whenever the plaintiff wished to. have the land vacated within the said terms giving the defendant 15 days" notice. Mr. Shambhu Prasad Singh for the respondents urged accordingly that the second lease in the above Allahabad case by the plaintiff Khuda Bakhsh was exactly in terms of the lease in the presentcase, and just as their Lordships of the Allahabad High Court held that the status of the lessees in that case was that of tenant-at-will and, therefore, the document did not require registration, so too in the present case the status of the defendant-appellant must be taken to be that of tenant-at-will who was liable to ejectment at the desire of the lessor. In my opinion, the argument of the learned counsel for the respondents does not appear to be correct. The true meaning of the term "tenant-at-will" is:

"Tenancies at will are tenancies which endure at the will of the parties only, i.e., at the will of both; for if a demise be made to hold at the will of the lessor the law implies that it is at the will of the lessee also, and vice versa. This, however, is only where no term is fixed in the demise between the parties, except the will of either or both; a demise, for instance, for ten years at the will of the lessor is not determinate at the will of the lessees and is therefore not a tenancy at will". (Foa's General Law of Landlord and Tenant, seventh edition, page 3).

The same view has been expressed in a number of cases in the Indian High Courts as well. A tenancy at will, therefore, gives an option to either party to

terminate the lease whenever he desires. Where, therefore, the power to terminate is unilaterally conferred only upon the lessor without the corresponding power to the lessee, it will be difficult to hold it to be a case of tenancy-at-will except in that narrow sense where such a power given to the landlord would imply similar power also given to the tenant. In the present case it cannot be contended that the lessee could terminate also at his will and claim proportionate abatement of the annual rent, much less the right to refund of the salami.

In the second place, as Foa has mentioned, above, tenancy-at-will can only result in a case where no term is fixed in the demise between the parties and the lease is terminable at the will of the lessor or where entry of the lessee is under a void instrument. Unless that is the position, it cannot be taken as the case of a tenancy-at-will whatever else may be the character of such a demise. Mr. Shambhu Prasad Singh no doubt sought to answer this contention with reference to the aforesaid Allahabad case (A). In my opinion, so far as the first sarkhat in the above case was concerned, no definite term of tenancy was fixed so that the lessee might well be taken as a tenant-at-will. So far as the second sarkhat was concerned, it is no doubt true that a term of six years definite was specified during which the lessee was to continue in possession on payment of a yearly rent, but it has to be noted that the facts of the above Allahabad case were peculiar indeed.

The land was let out to the lessees for a specific purpose, namely, for tethering cattle and to have a feeding place. The land was in front of the house of the lessor so that it is very difficult to hold it to be, strictly speaking, a lease. In the context of the case the right conferred upon the lessee was no higher than that of a licensee, and that is why Mahmood J. who delivered the judgment, held that in the peculiar circumstances of the case such a document did not require registration. In my opinion, the occupation of the lessee was merely that of a licensee because, as is well settled, a licence does not create any interest in the land, as it passes no interest in the premises unless coupled with a grant and in the said Allahabad case the grant was only for a specific purpose of tethering cattle and having a charahi or feeding place.

In these circumstances the aforesaid decision of the Allahabad High Court rests on its peculiar facts and is of no assistance to the learned counsel for the respondent. There is another decision of the Allahabad High Court in the case of Ghasi Ram v. Malomy Club AIR 1023 All 383 (2) (B). That was a lease for a term of 30 years with an option given to the lessor to terminate it at his desire and if no rent was paid and it was held that the lease could not be said to be for a term exceeding one year. It was not held therein that the lessee was a tenant-at-will.

6. I may, however, refer to two decisions of the English Courts which were the basis of the passage quoted above from Foa's General Law of Landlord and Tenant. The first case is that of Morton v. Woods 1869 4 QB 293 (C). It was a case in which a mortgagor in possession executed a mortgage to the defendant

to secure the repayment with interest of certain advances to be made by the defendants. The mortgage was by indenture between the mortgagor and the defendants which was never executed by the defendants. The mortgagor conveyed all the premises comprised in the recited mortgage to the defendants in fee upon trust that the defendants should, either immediately or at any time, sell them, and as a further security for the principal and Interest for the time being due from B, the mortgagor, to the defendants, B did thereby attorn and become tenant to the defendants.

The premises were conveyed for a period of 10 years to the mortgagor by the mortgagee with a clause that notwithstanding anything contained therein, it would be lawful for the defendant mortgagees to eject the mortgagor and to determine the said term of 10 years notwithstanding any lease that might have been granted by B. The defendants made the stipulated advance, and B continued in occupation of the premises. In those circumstances it was held by the Queen's Bench (Division) that the intention of the parties, as evidenced by the deed, was to create a tenancy-at-will only, and not a term of ten years; that a deed being therefore unnecessary, the tenancy created by the assent of the parties and the occupation under it, and that the fact that the defendants had not executed the deed was immaterial.

It was held secondly that the parties having agreed that the relationship of landlord and tenant should be established between them, the mortgagor was estopped from setting up that the defendants had no legal reversion. Apparently this case may be relied upon in support of the contention on behalf of the respondents but it is relevant to quote the passage at p. 305 of the report which runs thus :

"Now upon the terms of the deed it was contended by the plaintiffs, as I have already said, that it was the intention of the parties to create a tenancy for ten years and that it would be contrary to this indention to hold that a tenancy-at-will only was created. In support of this proposition the great authority of Brooke's Abridgment, recognized and cited in Bacon's abridgment, was cited : "That if one makes a lease for ten years at the will of the lessor, this is a good lease for ten years certain, and the last words are void for the repugnancy" and it is said : so here the attornment is for ten years and the proviso that the landlord may enter and determine the tenancy at his pleasure, does not convert the term into a tenancy at will, but the proviso must be rejected as repugnant.

It might be so in the ordinary case of a lease; but in order to ascertain whether such a rule of construction has any application to the present instrument, we must take Into consideration the whole scope and object of it. And when we find the main and indeed only object of the deed is a mortgage, and that the creation of a tenancy and the relation of landlord and tenant with a reservation of rent are intended as a mere security for the repayment of the mortgage money and interest, the authority cited is no longer applicable; and we must look at the whole instrument taken together in order to ascertain the intention of the parties.

Now the parties may have contemplated that the relation of mortgagee and mortgagor, and of landlord and tenant, would, in all probability, or might at any rate last for ten years, and accordingly a term, of ten years is mentioned, but as the object of the relation of landlord and tenant is simply to secure a more speedy and ample remedy to the mortgagee, if his principal and interest be not repaid by regular instalments, a power is given to the mortgagee to enter at any time without notice, and it is clear from the proviso that, whatever was the nominal duration of the tenancy, it was intended that it should be in the power of the mortgagee at any time to put an end to it, in other words, the clause of attornment and proviso taken together created a tenancy-at-will, subject to the payment of the rent of ₹800 as long as the mortgagor was allowed to remain in possession". It is obvious, therefore, that their Lordships accepted the contention that if it were the case of an ordinary lease fixing a period of ten years certain with a clause that the lessor would have the option to terminate the tenancy, the latter claim would be void for repugnancy. In the above case, however, the status of the mortgagor was held to be that of a mere tenant-at-will because on a construction of the documents and the surrounding circumstances, the court came to the conclusion that the object was not to create an ordinary tenancy but merely to secure a speedy and ample remedy to the mortgagee.

7. The above case came up for consideration in the case of *Threlfall Ex parte* (1880) 16 Ch. D. 274 (D). There also the case was one where the mortgage deed contained an attornment clause whereby the mortgagor attorned and became tenant from year to year to the mortgagee, for and in respect of the mortgaged premises, at the yearly rent of ₹ 800, to be paid by equal quarterly payments. And it was thereby agreed that it should be lawful for B (the mortgagee) at any time after three months from the date of the mortgage, without giving previous notice of his intention to do, to enter upon and take possession of the premises whereof A (the mortgagor) had attorned tenant, and to determine the tenancy created by the aforesaid attornment.

In those circumstances it was held that a tenancy from year to year and not a tenancy-at-will was created by attornment clause, and that B was entitled under the Bankruptcy Act, 1869, Section 34, to distrain for the rent due to him from A at the time of filing the liquidation petition. Some of the Judges who decided *Threlfall's* case (D) were also parties to the decision of *Morton's* case (C) referred to above, and yet they held that their Lordships in *Morton's* case (C) never meant that a tenancy-at-will with all its consequences resulted in that case as well. Cotton, L. J. observed as follows:

"Then it is argued that the point was concluded by the authority of *Morton v. Woods* (D) because some of the Judges there said that the tenancy in that case was not demise for ten years but that it was intended to be a tenancy-at-will. One can hardly think that they meant a tenancy at will with all its consequences. At all events, that opinion was founded on the construction of that particular deed and cannot bind the construction of another deed in different words. In this case

I think there was no tenancy-at-will, but a yearly tenancy".

Lush L. J. observed as follows:

"Although In Morton v. Woods (C) the expression "tenancy-at-will" was used by some of the Judges while professing to describe the relation between the parties, yet it must not be taken, as intended to be an exact legal definition of it, particularly when we consider the facts and arguments before them. In all cases the words of the judgment must be considered with reference to the arguments adduced. I am rather glad to see that I did not myself describe the tenancy as a tenancy at will. But the argument in that case was that the attornment was for ten years, and if so, void because not made by deed; and therefore, for an indefinite term not to exceed ten years determinable at the will of the landlord. That is precisely like this case, a yearly tenancy with an express proviso for the determination of that tenancy at any time by will of the lessor". Although the facts, therefore, are slightly different, it is clear that all the learned Judges in the case of Threlfallsad occasion to consider the limitation of scope of the proposition of law laid down in Morton's case (C). Therefore, the observation in the case (O) with regard to the position in the case of an ordinary lease for a certain term must be taken as laying down the law correctly that where a fixed term is mentioned and an option is given to the lessor to determine the lease whenever he desires the latter must be taken as void for repugnancy.

A case of tenancy-at-will can arise in certain circumstances only when there is no definite term recited in the document for the continuance of the tenancy and the tenancy is terminable at the option of the lessor. In the present case the definite term of two years was incorporated in Exhibit I, and, on a consideration of the authorities mentioned above I am unable to hold that it is a case of tenancy-at-will as was sought to be supported by the learned counsel for the respondents.

8. In the result the suit of the plaintiff must fail on this ground and the finding of the learned Additional Subordinate Judge cannot be sustained.

9. Learned counsel for the appellant further urged that Exhibit 1 having been cancelled, it could not serve as a basis for any kind of claim of damages. It appears, however, that the learned Additional Subordinate Judge in fact did not grant a decree to the plaintiff on foot of the document which appeared to him to be of a penal nature. In so far as the claim of Rs. 500/- per day for, failing to give delivery of possession after service of one week's notice was concerned. The learned Additional Subordinate Judge resorted to the provision of Section 74 of the Contract Act and granted the plaintiff only reasonable damages.

Since I have held above that the plaintiff, was not entitled to eject the defendant prior to the expiry of the term of the lease of two years, it is unnecessary for me to enter into the further question as to the correctness of the view of the trial Court with regard to the amount of damages decreed by it. Learned counsel for the respondents, however, contended that damages having been decreed on a consideration of all the circumstances, the learned Additional Subordinate Judge

was right in his conclusion. Mr. Choudhary, however, for the appellant urged that the plaintiff had given no evidence with regard to the measure of the loss suffered by him, and as such, he was not entitled to any decree.

Exhibit 1 could not be relied upon for any purpose whatsoever including the annual rental. According to Mr. Choudhury what the plaintiff purported to do was not even to determine the lease, but to cancel it so that it should be held that it never existed for any purpose whatsoever and the observation of their Lordships of the Judicial Committee in the case AIR 1929 179 (Privy Council) , that the plaintiff must prove the actual damages will apply more pointedly in this case. Mr. Shambhu Prasad Singh contended that the argument was purely academic because exhibit 1 was not relied upon for any purpose by the learned Additional Subordinate Judge, but the true question was whether he could determine the measure of damages in terms of Section 74 of the Contract Act.

It would be only reasonable damages with regard to the circumstances of the case. There is force in Mr. Choudhury's contention but I am not prepared to pronounce any opinion on this aspect of the matter In view of my conclusion on the first part of the plaintiff's case, namely, his right to eject the defendants as I have said above, We have been Informed by the learned counsel for the parties that the plaintiff duly came into possession on the expiry of the term of two years as mentioned in the lease, (exhibit 1) so that no further question arises with regard to the claim of the plaintiff for damages.

10. In the result the appeal must be allowed, the judgment and decree of the learned Additional Subordinate Judge set aside and the suit of the plaintiff dismissed with costs of both the Courts.

Rai, J.

11. I agree that the indenture (exhibit 1) did not create merely a tenancy at will in favour of K. L. Thapper. I also agree that the indenture created a lease for a definite period of two years, and the subsequent terms Incorporated in paragraph 1 of the indenture could not nullify or shorten the period of the lease. I further hold that even if the terms incorporated in paragraph 1 of the indenture (Ext. 1) be held to be valid and binding upon the parties, the present suit on the evidence as it stands at present is bound to fail.

Now, according to the terms set out in paragraph 1 of the Indenture and the letter (Ext. 2-K), the indenture (Ext. 1) itself stands cancelled. After its cancellation the terms incorporated to paragraph 1 of the indenture cannot be the basis of any claim by the plaintiff at whose instance it is claimed to have been cancelled. The present suit is a suit for damages; but the plaintiff has adduced no evidence, apart from Ext. 1 in support of his claim. No witness for the plaintiff has said anything as to what was the amount of damage that the plaintiff had suffered on account of the defendant not giving up possession within the time provided in the letter (Ext. 2-K).

In a suit for damages it is for the plaintiff, to adduce reliable evidence to show what damage, he has suffered, but as no evidence has been adduced on behalf of the plaintiff on this point, the suit must fail on this ground also. I further agree that the suit be dismissed and the appeal be allowed with costs throughout.