

(1912) 06 CAL CK 0009

Calcutta High Court

Case No: None

Rajendra Narain Saha

APPELLANT

Vs

Satish Chandra Pal

RESPONDENT

Date of Decision: June 19, 1912**Acts Referred:**

- Bengal Tenancy Act, 1885 - Section 22

Citation: 15 Ind. Cas. 331**Hon'ble Judges:** Chapman, J; Carnduff, J**Bench:** Division Bench

Judgement

1. The appellant in this second appeal is admittedly the sole proprietor of the land in suit. The respondent and his brother Abhoy jointly held the land under him as occupancy-ryots. Abhoy's half share was transferred to the appellant, who, according to the respondent, thereupon proceeded to interfere with the latter's peaceful enjoyment of the property. The respondent, therefore, brought this suit against his landlord for a partition of the occupancy-holding. Both the Courts below have concurred in decreeing the suit, and the landlord has presented this second appeal.

2. In support of the appeal, it has been contended, in the first place, that only permanent rights in property can be partitioned, and that, as an occupancy right is not a permanent right, there can be no suit for the partition of an occupancy-holding.

3. As regards this, we are unaware of any authority in support of the proposition. So far as we know, any property held for the time being jointly can be partitioned between joint holders. It seems quite clear, for instance, that one of two joint lessees under a lease for a term of years might sue for a partition of the lease-hold property during the continuance of the lease. If it were not so, the position might become, as seems to be the case here, absolutely intolerable. Before the transfer of

half of the joint holding in suit, the respondent might certainly have sued his brother for a partition of the holding, and his right to obtain a partition now is distinctly saved by the provisions of Section 22 of the Bengal Tenancy Act of 1885. We are of opinion, therefore, that there is no bar whatever on this ground to the relief sought for by the respondent.

4. We may add, of course, that in the case of a partition of a holding, the division, unless made with the landlord's permission, would not be binding on him and his position would be unaffected.

5. The next contention is that, as it has recently been held in *Agarjan Bibi v. Pana-ullah* 6 Ind. Cas. 452 : 12 C.L.J. 169 : 14 C.W.N. 779 : 37 C. 687 that the right of occupancy is a purely personal right and cannot be transferred, a suit for the partition of such a right is not maintainable.

6. Now, the decision referred to raises a question of considerable difficulty, and it is understood that it is likely to form the subject of a reference to a Full Bench, if, indeed, the reference has not already been made. It is suggested that we should await the result of such a reference; but we think it hardly necessary to do so. What the respondent has sought in this case is simply a division of the land in suit in order that he may be able to enjoy his share of it peacefully and without disturbance. We cannot, as we have already indicated, conceive that there is any legal objection to his being so relieved.

7. Two other points have been taken by the learned Vakil for the appellant, namely, that the lower Appellate Court has omitted to deal with the question of limitation, which was decided by the Court of first instance, and has similarly ignored a question as to the determination of the occupancy-right claimed.

8. It appears, however, that these points were not pressed before the lower Appellate Court; for the learned Subordinate Judge begins his judgment by remarking that the points urged and requiring decision are whether the plaintiff has got a right to claim partition and whether he can obtain it". If the learned Subordinate Judge was inaccurate in making this statement, we think he ought to have been corrected by an application for review. We must take it here and now that these were the only points urged before him.

9. The result is that this appeal must be dismissed with costs.