(1878) 01 CAL CK 0001

Calcutta High Court

Case No: None

Radhica Prosonno Chunder		APPELLANT
	Vs	
Zoolfun Bibee		RESPONDENT

Date of Decision: Jan. 9, 1878

Citation: (1878) ILR (Cal) 561

Hon'ble Judges: L.S. Jackson, J; Kennedy, J

Bench: Division Bench

Judgement

L.S. Jackson, J.

Against the latter part of the judgment the plaintiff appealed to the District Court, and the effect of the District Judge''s judgment was this--that although the defendant might have held this land and paid the rent for twelve years and more, yet that, as she was not paying to the plaintiff, but held the land as a portion of a different estate, the right of occupancy, which the Kent Law recognizes and affirms, could not grow up in such circumstances. He says: "The defendant''s jote is in the mudur land, and her encroachment on julpai land, over which neither she nor her vendor had any right, cannot give her a right of occupancy: she was simply a trespasser." He went on: "The finding of the lower Court, that the land is part of the julpar estate, is tantamount to a finding that the defendant is only a trespasser. The respondent''s pleader argues that as she was acknowledged as a tenant by her lessor, she cannot be treated as a trespasser and ejected, but the party whose tenant she is, had no right in the julpai lands, and he could not confer on her a right which he did not himself possess." It is clear from that, that the defendant had not ousted any person who was a rightful jotedar or tenant or anybody else; but that he had taken a lease of these lands from a person claiming to have a right, and, as such lessee, had occupied and presumably paid the rents. Now that a person occupying land under one who is not the rightful landlord does, nevertheless, acquire a right of occupancy, is most clearly laid down by Pheah and Ainslie, JJ., in the case of Syud Ameer Hossein v. Sheo Sukae [1] which was apparently a case in direct analogy with

the present. In a suit between the zemindars of one estate and the proprietors of another, it had been fairly proved and determined that the land, the subject of the suit, belonged to the plaintiffs; and upon their contending in the suit, which was then before the Court, that even if the defendants had cultivated for twelve years under the maliks, they could acquire no right of occupancy, inasmuch as the maliks had no title, the learned Judges hold, "the mere fact that the person to whom he for some years paid rent had no title cannot take away from him the character of ryot or prevent him from counting those year''s in the time necessary to give him a right of occupancy under Act X of 1859." In that decision, as at present advised, we entirely concur. The Judge, it appears to me, states a fallacy when he speaks of a lesser conferring on the ryot a right which he does not himself possess; that is not a right conferred by any lesser. It is a right which, by virtue of the law, grows up in the ryot from the mere circumstance of cultivating land for twelve years or upwards and paying rent due thereupon. It appears to me, therefore, that the lower Appellate Court is mistaken; that the judgment of the Judge, therefore, must be set aside, and the judgment of the Court of first instance restored with costs.