

(1878) 03 CAL CK 0004

Calcutta High Court

Case No: None

Deo Narain Singh and
Another

APPELLANT

Vs

Lal Sahoo

RESPONDENT

Date of Decision: March 25, 1878

Citation: (1878) ILR (Cal) 781

Hon'ble Judges: McDonell, J; Ainslie, J

Bench: Division Bench

Judgement

Ainslie, J.

On appeal the Subordinate Judge affirmed the finding that the holding is not protected from enhancement, and also held that no custom of transfer of occupancy rights without the consent of the landlord had been established. This last finding is irrelevant, as ejectment is not sought. He went on to hold that Nuro Panday had no right to build, and consequently could give no such right to his vendee. He assumes it to be an established rule that a lessee cannot build on land held by him for cultivation, and supports this view by a reference to the case of Juggut Chunder Roy Chowdhry v. Eshan Chunder Banerjee 24 W.R. 220. In that judgment the Court said: "It may well be that, in particular places, ryots having rights of occupancy in land for agricultural purposes may, by custom, have the right to transfer it to any person to hold for the same purpose; but that will not carry with it the proposition that a person who may be desirous of erecting a large house in the midst of an agricultural mehal, can buy up the tenures and rights of several cultivators and convert the land which they formerly occupied into a dwelling-house and appurtenances." These observations, however, are qualified by what follows. The Court did not dispose of the case simply on this view of the law, but remanded it for enquiry, among other things, whether any and what express injury resulted to the plaintiff from the acts complained of. It must, however, be borne in mind that, in this case the defendant was co-sharer in the estate.

2. It is complained that the Subordinate Judge ought not to have affirmed the decree in favour of the plaintiff without enquiring whether any injury would result to the plaintiffs from the building commenced by the defendant, and without allowing him to give further evidence to establish the guzasth rights of Nuro Panday. (The learned Judge having referred to the defendant's witnesses not being examined, and the Subordinate Judge's finding thereon, continued.) Reference has been made by the respondent to what is called the *issumnavisee* of witnesses. This, I think, is of no importance. A party is not tied down to any particular line of enquiry indicated in a list of his witnesses, but the fact that his complaint to the lower Appellate Court was based on the exclusion of evidence on a particular point is sufficient to tie him down to that point in special appeal.

3. As to the other objection, I think we must hold that a ryot who relies upon an occupancy right must be taken as thereby admitting that the letting was of such a character as is contemplated in Beng. Act VIII of 1869; and it has been held that this law only applies to agricultural holdings. If then we take it that the land was let on the understanding that it was to be used for cultivation, the fact the ryot has acquired a right of occupancy does not alter any of the terms of the letting, except the conditions (if any) fixing a term for the tenancy.

4. The statutory right of occupancy cannot be extended so as to make it include complete dominion over the land, subject only to the payment of a rent liable to be enhanced on certain conditions. The landlord is still entitled to insist that the land shall be used for the purposes for which it was granted, and although a liberal construction may be adopted, it cannot extend to a complete change in the mode of enjoyment.

5. The appeal must be dismissed with costs.