

(1871) 12 CAL CK 0002

Calcutta High Court

Case No: Special Appeal No. 692 of 1870

Ram Sahoy Sing

APPELLANT

Vs

Pandit Sheo Prokash
Misser

RESPONDENT

Date of Decision: Dec. 22, 1871

Judgement

Sir Richard Couch, Kt., C.J.

There is certainly some conflict of authority on this point which does render it desirable that the question should be determined by a Full Bench. Now the question arises upon sections 6 and 7, Act X of 1859, and, looking at the language of those sections, it appears to me that the question must be answered in the affirmative, and that a ryot who has so held is entitled to a right of occupancy in the land.

2. Section 6 says--"Every ryot who has cultivated or held land for a period of twelve years has a right of occupancy in the land so cultivated or held by him, whether it be held under a "potta or not" which shows that the Legislature intended the section to apply to cases of holdings under a potta. The section then proceeds--"so long as he pays the rent payable on account of the same." Then come the words, "but this rule does not apply to khamar, nij-jote or one belonging to the estate or tenure and let by him on lease for a term or year by year, nor (as respects the actual cultivator) to lands sublet for a term or year by year by a ryot having a right of occupancy." Here again the Legislature appears to have had in contemplation the case of holdings for a term. Then section 7 provides, that nothing contained in the last preceding section shall be held to affect the terms of any written contract for the cultivation of land entered into between a land-holder and a ryot when it contains any express stipulation contrary thereto."

3. The whole question turns upon what is the meaning of an express stipulation contrary to the ryot acquiring the right of occupancy. Now where there is a potta for a fixed term, no doubt, at the expiration of that term, the landlord has a right of re-entry upon the land, and if the ryot does not give up possession, the landlord may recover the land from him.

4. The landlord need not re-enter upon the land if he does not think fit; he may, and often does (in this case, he did) allow the tenant to remain in possession of the land. I cannot consider that the right of re-entry which arises by reason of the expiration of the term named in the potta can be regarded as an express stipulation that the ryot shall not, if he occupies the land for more than twelve years, acquire the right of occupancy given by section 6. An express stipulation must mean something more than that. It is not necessary in this case to define precisely what would be an express stipulation. Of course the clearest express stipulation would be an insertion in the potta or written contract of a clause that the ryot shall not, by reason of his holding under that instrument, acquire any right of occupancy in the land, or it might be that something less than that would suffice, where, for instance, the term in the potta exceeded twelve years, if the ryot agreed expressly to give up the land at the expiration of the term, that would be regarded as an express stipulation contrary to the right of occupancy, because an agreement that he would give up the land would be inconsistent with his having a right of occupancy, a right to retain possession of it.

5. In this case, the question as put to us is that of a man holding under a potta which does not contain any contract or agreement of that nature. I think, as the question is put, that the fact of a simple holding under a potta which does no more than fix the term of the holding, cannot be considered as a written contract which contains an express stipulation contrary to the right given by section 6, and that this question should be answered in the affirmative.

6. It appears to me that the cases, in which it has been held that the ryot did not acquire a right of occupancy, have turned very much upon what was the effect of the right of re-entry on the part of the landlord. I think that the mere existence of the right of re-entry, the mere fact that at the end of the term agreed upon, the landlord can turn out the tenant and get possession of the land, is insufficient to bring the case within section 7.

7. The question must be answered in the affirmative.

8. I am authorized to state that Mr. Justice L.S. Jackson, who is not present today, agrees in the opinion which I have expressed.

Bayley, J.

9. I concur.

Glover, J.

10. I concur with the Chief Justice.

Macpherson, J.

11. I concur in the proposed answer, although in doing so I depart in some degree from the opinion which I have expressed on a previous occasion. The difficulty which I have always felt arises from the inconsistency which certainly exists between a ryot accepting a lease for a term, or several consecutive leases for several terms, and his acquiring at the same time an actual right of occupancy independent of, and, as it were, in spite of, those leases. On further consideration of section 7 of Act X of 1859, however, and seeing how distinctly it is laid down there that any stipulation which is to prevent the ryot from acquiring a right of occupancy under the previous section must be express, I think that the view now expressed by the learned Chief Justice is correct, because it is impossible to say that the mere fact of a ryot taking a lease for a term of years amounts to an express stipulation so as to prevent the right of occupancy being acquired.

Mitter, J.

12. The question we have to determine in this case is whether a ryot who has cultivated a piece of land continuously for a period of twelve years, but under several pottas, each for a term of years, is entitled to claim a right of occupancy in the land so cultivated by him, or otherwise.

13. I am of opinion that this question ought to be answered in the affirmative.

14. I do not think it necessary for the purposes of my decision to enter into any discussion on the rights possessed by the ryots of this country previous to the promulgation of Act X of 1859. Let it be granted that the ryot in this particular case could not have claimed any right of occupancy but for the passing of that Act; and as after this concession the question must be determined with reference to the true construction of the 6th and 7th sections of that Act, which are in fact the only two sections bearing upon the point, it is to that construction that I wish to confine my attention.

15. The sixth section says, "Every ryot who has cultivated or held land for a period of twelve years, whether under a potta or not, has a right of occupancy in the land so cultivated or held by him, so long as he continues to pay the rent payable on account of the same." If this provision had stood alone, no question whatever could have been raised as to the correctness of the answer proposed by me. But the seventh section goes on to say,--"But nothing in the preceding section shall be held to affect the terms of any written contract entered into between a landholder and a ryot, when it contains an express stipulation contrary thereto." The question is therefore reduced to this; whether a potta must be held to contain an "express stipulation" within the meaning of the above section merely because it purports to be for a term of years? I am of opinion that this question ought to be answered in the negative.

16. It may be conceded, that a ryot who holds under a potta for a specified term of years, is as a general rule under an implied obligation to surrender the land to his lessor on the expiration of that term. But not only is this obligation not an express obligation, but it is a

mere matter of inference liable to be rebutted by the surrounding circumstances of each particular case. That it is a matter of inference only is I believe a proposition beyond all dispute; for we cannot hold without doing violence to the ordinary meaning of words, that a stipulation to hold for a particular period of time is identical with a stipulation to give up the land on the expiration of that period, or with a stipulation not to acquire a right of occupancy by reason of possession for twelve years.

17. Suppose, for instance, that a khodkast and kudimi ryot, whose possession has continued from the time of the Permanent Settlement, and who would therefore have been entitled to claim a right of occupancy, even if Act X of 1859 had not been passed, takes a potta for a term of years. Or suppose that a ryot who has already acquired a right of occupancy under the provisions of that Act, takes such a potta or is obliged to take it, by a decree of Court passed under the provisions of the 76th section. Can it be contended for a single moment that the potta so taken must be held to contain an express stipulation on the part of the ryot to surrender the land on the expiration of the term, merely because it purports to be a potta for a term of years? That a potta of this description is not necessarily inconsistent with the existence of a right of occupancy is clear from the provisions of the 76th section above referred to. The language of that section is significant and appears to have a very important bearing upon the point now under our consideration. It runs as follows:-- "If on the trial of a suit for the delivery of a potta instituted by a ryot having a right of occupancy the parties do not agree as to the term for which the potta is to be granted, the Collector shall fix such term as, under the circumstances of the case, he may think just and proper. Provided that the term shall not in any case be longer than ten years, &c., &c." These words are not only sufficient to negative the supposition that ryots possessing rights of occupancy never hold under pottas for terms of years, but they show most conclusively, at least to my mind, that a potta for a term of years does not necessarily amount to an express stipulation on the part of the ryot to surrender the land on the expiration of the term. Of course, in the cases supposed by me, there is a preexisting right of occupancy; but this circumstance cannot affect the validity of my argument as far as it goes; for, if a potta is to be held to contain a stipulation of the above description, merely because it purports to be for a term of years, it would be just as much sufficient to destroy a pre-existing right of occupancy as to bar the acquisition of a new one. The principle of construction must be the same in both cases, for the documents to be construed are precisely of the same character, and it is beyond all question that, if a ryot possessing a right of occupancy enters into an express stipulation with his landlord to surrender the land on the expiration of a stated period of time, he would be bound like every other individual to fulfill the terms of his contract. That he is at full liberty to enter into such a stipulation does not seem to require any discussion.

18. I do not mean to say that the stipulation contemplated by section 7 should, as a matter of course, be worded precisely as follows: "No right of occupancy shall be acquired by the ryot by continuous possession for a period of twelve years." But I

maintain that there should be a written contract between the parties, and that this written contract should contain a distinct provision expressly negating the acquisition of a right of occupancy, and this may be possibly done either by a covenant on the part of the ryot in the last potta to surrender the land on the expiration of the specified term, or by a clause empowering the landlord to take possession of it on the occurrence of that event. No doubt, a Court of Justice might be fully warranted in holding, in the absence of any special circumstances to the contrary, that a potta for a term of years implies the existence of a tacit understanding between the parties thereto that the ryot should give up the land to the landholder on the expiration of the term. But as this is a mere matter of inference liable to be rebutted by the special circumstances, it cannot, in my opinion, supply the place of the "express stipulation required by section 7."

19. The above view appears to be fully borne out by the proviso in section 6. That proviso is as follows:--But this rule does not apply to khamar, nij-jote, or seer land belonging to the proprietor of an estate or tenure, and let by him on lease for a term, or year by year," Now, if the Legislature had thought that a lease for a term of years must be taken as a necessary bar to the acquisition of a right of occupancy, what necessity was there for making this distinction between the ordinary lands, and the khamar, nij-jote or seer lands of an estate? To treat this proviso as a mere surplus-age would be contrary to all recognized rules for the construction of statutes, and yet this appears to be the only alternative left to those who contend that a lease for a term of years is necessarily inconsistent with the acquisition of a right of occupancy. Every word used in a legislative enactment must be presumed to have been used advisedly and deliberately, and a comparison of the language of this proviso with that of the following section, namely, section 7, clearly shows that the word "express" used in this last mentioned section is by no means an exception to the general rule.

20. It has been argued that a right of occupancy cannot be held to have accrued in this case, inasmuch as the landlord could have, if he liked, ejected the ryot on the expiration of the term fixed in each of the pottas. I confess that I am at a loss to understand the force of this argument. If the meaning of this contention is, that, in the face of the provisions of Act X of 1859, the landlord could have so ejected the ryot notwithstanding uninterrupted possession on the part of the latter for a period of twelve years, the argument would be clearly inadmissible upon the ground that it assumes the very question we have to determine in this case, namely, whether the landlord had the power to do so or not. If, on the other hand, it is intended to be urged that the landlord could have exercised such a power of ejectment on some date previous to the passing of that Act, or to the completion of the period of twelve years required by law to create a right of occupancy, the argument would equally fail, though upon a different ground, namely, that of irrelevancy. With reference to the first portion of the argument it is sufficient to say, that the case before us is admittedly governed by Act X of 1859, and it is therefore clear that nothing that the landlord could or could not have done before that Act became law can affect our decision one way or the other. As for the second portion, it may be conceded

over and over again that the landlord had the power which is now claimed on his behalf; but I am unable to see how this concession can advance his case in any manner whatever. That the existence of such power cannot, by any stretch of reasoning, be construed into a stipulation of the nature contemplated by section 7 is almost self-evident. A stipulation is a matter of mutual agreement, and it would be absurd to contend that because one man has the power to eject another on a particular date the latter must be held to have entered into an agreement with the former, acknowledging his liability to be so ejected either on that date or on a subsequent one. What then is the force of this objection? Reduced to its naked form it amounts to this, the landlord in this particular case might have, if he liked, ejected the ryot at some time before the latter had completed the twelfth year of his possession. But I apprehend that there is not a single case arising u/s 6 to which the same argument would not apply with equal force, if there is any force in it at all. Take, for instance, the case of a mere tenant-at-will, who has been allowed by his landlord to remain in possession for a period of twelve years. It is beyond all question that such a tenant could have been ejected by the landlord at the end of each of those twelve years. But can it be contended for a single moment that, because he was liable to be so ejected, no right of occupancy would accrue to him by virtue of his possession for twelve years, if he is a ryot within the meaning of section 6? Indeed, the right of occupancy referred to in that section is, by its very nature, the offspring of the landlord's forbearance to eject the ryot for a specified period of time; and if any argument is to be drawn against the acquisition of that right from the fact that the landlord might have, if he liked, ejected the ryot on some date previous to the completion of that period, all that I can say is, that section 6, Act X of 1859, is the most meaningless piece of legislation I have met with. I have already shown that the question we have to determine is, whether there was such a stipulation between the parties to this litigation as would bar the acquisition of a right of occupancy under the provisions of section 6, and not whether the ryot had a right of occupancy before he was in a position to claim one under that section; and in this view the fallacy of the argument under our consideration is too obvious to require further discussion.

21. It has been further argued, that the acceptance of a new potta on the expiration of each old one must be considered as an admission on the part of the ryot that there was an express stipulation between him and his landlord within the meaning of section 7. But the first question I have to ask is, where is this stipulation to be found, whether in the old potta or in the new one? If the old potta cannot be held to contain that stipulation, merely because it purports to be for a term of years, no admission made by the ryot on a subsequent date, namely, that of the new potta, can introduce it there. If, on the other hand, it is said that it is to be found in the new potta, our position is no way advanced by the supposed admission: for we are then obliged to go back to the original question with which we started, namely, whether a potta must be necessarily held to contain an express stipulation of the nature contemplated by section 7, merely because it purports to be for a term of years. It is to be borne in mind that the stipulation required by that section must be contained in a written contract, and, if it is once conceded that it is not to be

found either in the old potta or in the new one, no inference drawn from any supposed admission on the part of the ryot can supply its place. The following illustration, however, will, I believe, be sufficient to show the extreme weakness of the above mode of reasoning. Suppose, for instance, that a ryot has held a piece of land under a single potta, but for a term exceeding twelve years, and the question whether he has acquired a right of occupancy in the land so held by him arises on the expiration of that term. In such a case it is clear no argument can be drawn from the acceptance of a fresh potta, for there is no such potta to fall back upon. Why then are we to attach any particular weight to that argument in the present case, when it is manifest that the acceptance of one potta after another cannot introduce in either of them a clause which they do not themselves contain. A potta granted for a term exceeding twelve years must be construed precisely in the same way as a potta granted for a term below that period, and if we once admit that the one is not sufficient to meet the requirements of section 7, merely because it happens to be a potta for a term of years, there seems to be no reason whatever why the same conclusion should not be held about the other.

22. Much stress has been laid upon the fact that the pottas in the present case were all granted previous to the promulgation of Act X of 1859. It has been argued that the land-holders of this country could not have possibly anticipated the stringent provisions of that Act, and that it would therefore be extremely hard upon them if the Court were to insist upon a very strict compliance with those provisions. This argument also is, in my opinion, without any valid foundation. It is admitted on all sides that the provisions of section 6 have a retrospective operation. This point was settled by a Bench of fifteen Judges in the case of *Thakooranee Dossee v. Bisheshur Mookerjee* 1 B.L.R., Supp., Vol., 202; and as it is impossible to contend that Act X of 1859 has made any alteration in the established rules for the construction of documents, I am unable to see how the mere fact of the pottas being dated previous to the passing of that Act can affect our decision one way or the other. A potta granted previous to the date of the promulgation of Act X of 1859 is subject to the same rules of interpretation as a potta granted subsequent to that date; and this being conceded, the answer to the question under our consideration must be the same in both cases. With reference to the plea of hardship, I wish to observe that there is nothing peculiar in the circumstances of this case to distinguish it from other cases in which a right of occupancy is acquired u/s 6. If a ryot who is a mere tenant-at-will can acquire that right by possession for twelve years, I do not see what peculiar hardship there would be for the landholders to complain of, if the same privilege is extended to a ryot who has been allowed to hold on for the same period, but under one or several pottas, for specific terms of years. In conclusion, I wish to say a few words about the decisions which have been quoted to us by the pleader for the appellant, viz., *Sadhoo Jha v. Bhupwan Oopadhya* 5 W.R., Act X Rul., 17, *Puddo Monee Dossia v. Jholla Pally* 7 Id., 283, *Kebul Muhtoon v. Sheikh Sunnoo* 5 Id., 80, *Damanulla Sirkar v. Mahmudi Nashio* 3 B.L.R., A.C., 178. I have read these decisions as carefully as I could, but; with great deference to the learned Judges by whom they were passed, I feel myself bound to say that I am unable to concur in the reasoning by which they were arrived at. In the first

place it appears to have been admitted in almost all these decisions that the question, whether a potta for a term of years is inconsistent with the existence of a right of occupancy, depends upon the surrounding circumstances of each particular case; but this admission alone is, in my opinion, sufficient to show that such a potta cannot be held to contain the "express stipulation" required by section 7. Then, again, in some of the decisions at least, the learned Judges appear to have been considerably influenced by the fact that the pottas they had to deal with were granted previous to the passing of Act X of 1859. I have already shown that this circumstance ought not to be allowed to affect our decision one way or the other, and I think it therefore unnecessary to dwell upon it any longer. I wish merely to add that the cases of Roy Odyte Narain Sing v. Ubhurun Roy 4 W.R., Act X Rul., 1, Sheeb Dyal Paulit v. Dwarkanath Sookul 2 Id., 54, Khajurannissa Begum v. Ahmed Reza Ante, p. 166, are the other way, so that there is no ground for contending that the conclusion arrived at by me is opposed to a uniform course of decisions.

¹Before Mr. Justice Kemp and Mr. Justice F.A. Glover.

The 2nd February 1869.

Khajuranissa Begum (Defendant) v. Ahmed Reza (Plaintiff.)*

Mr. Peterson (with him Mr. R.E. Twidale and Munshi Mahomed Yousaff) for the appellant.

Mr. C. Gregory for the respondent.

This case was remanded for trial of certain issues.

The plaintiff and defendant were co-sharers in the Pergunna of Surajpur. The plaintiff averred that the gunj in dispute called Kutabgunj was founded by his ancestor, and that he was entitled to the profits derived from the gunj, paying ground-rent to his co-sharer in the estate in proportion to his interest in the said estate. The suit was for confirmation of title and possession over the gunj, which had been threatened and disturbed by proceedings held under Act X of 1859 by the defendant.

On remand, the Judge found all the issues in favor of the plaintiff.

Among the points taken in special appeal was

2nd. That, even admitting that the plaintiff held as a ryot, he held without any binding lease, or at least on terminable leases of five years each; that the defendant, special appellant, as zamindar, had therefore a right to eject the plaintiff and to collect the rent from the actual occupiers of the land.

On this point the judgment of the Court was delivered by

Kemp, J.--On the second ground, we find that the plaintiff has held the land as a ryot receiving the profits of the bazar from the shop-keepers through the Chowdris. This has been found on the evidence, and the occupancy of the plaintiff, whether under renewed leases or on a continuous lease, has been for a period amply sufficient to give him a right of occupancy.

(1) Section 2.--"Every ryot is entitled to receive from the person to whom the rent of the land held or cultivated by him is payable, a potta containing the following particulars:

The quantity of land; and where fields have been numbered in a Government survey, the number of each field.

The amount of annual rent.

The installments in which the same is to be paid.

And any special conditions of the lease.

If the rent is payable in kind, the proportion of produce to be delivered, and the time and manner of delivery."

(2) Section 6.--"Every ryot who has cultivated or held land for a period of twelve years has a right of occupancy in the land so cultivated or held by him, whether it be held under a potta or not, so long as he pays the rent payable on account of the same; but this rule does not apply to khamar, nij-jote, or seer land belonging to the proprietor of the estate or tenure, and let by him on lease for a term or year by year, nor (as respects the actual cultivator) to lands sub-let for a term, or year by year, by a ryot having a right of occupancy. The holding of the father, or other person from whom a ryot inherits shall be deemed to be the holding of the ryot within the meaning of the section."

(3) Section 7.--"Nothing contained in the last preceding section shall be held to affect the terms of any written contract for the cultivation of land entered into between a landholder and a ryot when it contains any express stipulation contrary thereto."

*Special Appeal, No. 1396 of 1868, from a decree of the Judge of Purneah, dated the 24th February 1868, reversing a decree of the Subordinate Judge of that district, dated the 29th July 1865.