

(1890) 01 CAL CK 0001**Calcutta High Court****Case No:** None

Bhubun Mohun Biswas

APPELLANT

Vs

Beni Madhub Chuckerbutty

RESPONDENT

Date of Decision: Jan. 8, 1890**Acts Referred:**

- Bengal Tenancy Act, 1885 - Section 116, 180

Citation: (1890) ILR (Cal) 393**Hon'ble Judges:** W. Comer Petheram, C.J; Tottenham, J**Bench:** Division Bench

Judgement

W. Comer Petheram, C.J. and Tottenham, JJ.

This was a suit brought by a ryot to recover four bighas of land of which he had been dispossessed by his landlord, the putnidar, and in which he claimed a right of occupancy by virtue of more than twelve years" continuous holding.

2. It was the case of both parties that the land had been held under the utbundi system; and the landlord's defence included these two points: first, that the land in question was part; of his khamar lands held from year to year, in which, by Section 116 of the Bengal Tenancy Act, no right of occupancy can accrue; and secondly, that, if the land was not khamar, the plaintiff, an utbundi ryot, had never held it for twelve years continuously, and therefore had not acquired in it any right of occupancy.

3. The first point is settled by the finding that the land is not khamar; and with that finding there is no ground for interference in a second appeal. As to the second point, the Court has found that the plaintiff's possession had extended over more than twelve years continuously, and that his right of occupancy had thus become perfect. But it is objected in appeal that this finding is based on a misconception as to the nature of an utbundi holding, and on an erroneous presumption that the plaintiff was in possession even in the years when he did not cultivate. It is clear that the lower Court has in fact so held, and that otherwise it could not have come to the

conclusion that the plaintiff had acquired a right of occupancy; for Section 180 of the Bengal Tenancy Act prohibits the acquisition of such right in land ordinarily let under the custom of utbundi, until that particular land has been held for twelve years continuously. In this respect utbundi land is dealt with in the Act differently from ordinary ryotti land, in which, by Section 21, a settled ryot has a right of occupancy no matter how short a time he has held possession of it.

4. Now it is necessary to enquire what this utbundi system really is; for there seems to have been some difference of opinion regarding it: and perhaps in fact the incidents of that system do vary in different places.

5. Several Judges who have sat in this Court have stated their own opinions on this subject, and their opinions have not been quite uniform. Perhaps our safest guide in the matter is what is to be found in special reports made by Revenue officers, and in the descriptions given in the Statistical Account of Bengal compiled by Sir W. W. Hunter from information carefully collected through local officers in the districts where the system exists. When the present Bengal Tenancy Act was under consideration by the Select Committee of the Legislative Council a memorandum by Mr. Cotton, then a Secretary to the Board of Revenue, on the various land tenures in Bengal, was submitted by the Government of Bengal for the information of the Select Committee. Mr. Cotton here reports upon the utbundi system and transcribes the passages describing it in the Statistical Account of Bengal in the districts of Nuddea (in which the land now in question is situated), Jessore, Moorshedabad, and Pubna; and he sums up the results. We quote the passage in the Statistical Report relating to the utbundi system in Nuddea: Utbundi is applied to land held for a year, or rather for a season only. The general custom is for the husbandman to get verbal permission to cultivate a certain amount of land in a particular place at a rate agreed upon when the crop is on the ground. The land is measured and the rent is assessed on it." Mr. Cotton says too that the utbundi ryot abandons altogether (i.e., has no right to claim again) any land, except such as he has under cultivation in any given year. The zemindar may let in jumma to some one any land which the utbundi ryot has not got under cultivation in any year.

6. Again, in September 1884, the Commissioner of the Presidency Division submitted to Government an analysis of the reports of his district officers regarding utbundi tenures. The Collector of Nuddea stated that cultivators who take such lands are not obliged to cultivate them a second year; but as a rule they can keep them for certain for three years if they elect to do so. Generally the lands under this system are cultivated from one to five years, and then left fallow for the same period. The cultivators acquire no right of occupancy, nor do they desire to do so.

7. These descriptions of utbundi do seem to refer rather to particular areas taken for cultivation for limited periods and then given up, than to holdings of which parts are cultivated and other parts lie fallow while the rent for the whole is assessed year by year with reference to the quantity within the holding under cultivation in that year.

A holding of the latter description hardly seems to answer to the general conception of utbundi, although the rent may be arrived at each year by ascertaining what area has been cultivated. It is not clear to which description the four bighas of the present suit belong: whether they are part of a larger holding once settled with the plaintiff, or whether they form a separate holding which he has from time to time cultivated on the utbundi system during a period which has covered more than twelve years. If it is the former case, his right of occupancy would seem to be complete: but if it is the latter case, we are not prepared to hold that cultivation at various times and under separate agreements on each occasion, such periods not being continuous, although of the same piece of land, would confer the right upon the ground that the first of such periods commenced more than twelve years before the alleged dispossession.

8. We accordingly set aside the decree of the lower Appellate Court and remand the case to that Court for a finding, after taking evidence, if necessary, on the question whether these four bighas are part of a larger holding or whether they have been occupied from time to time under the custom of a separate utbundi as above described. Costs to abide the result.