

(1872) 02 CAL CK 0005

Calcutta High Court

Case No: Special Appeal No. 763 of 1871

Sheikh Mahomed
Chaman

APPELLANT

Vs

Ramprasad Bhagat and
Others

RESPONDENT

Date of Decision: Feb. 12, 1872

Final Decision: Dismissed

Judgement

Macpherson, J.

It appears to me that the Subordinate Judge is right in holding that the plaintiff has not acquired a right of occupancy. The twelve years' occupancy on which he relies is made up in this way. First, he and one Khoda Baksh held the land for five years, under a potta granted to them both. Since the expiry of the term of that potta, the plaintiff has alone been in occupation for seven years. And he now contends that this constitutes twelve years' occupation, giving him a right of occupancy u/s 6, Act VIII of 1869 (B.C.). In my opinion the right of occupancy acquired u/s 6 must be an occupancy of one and the same kind, that is to say, it must be occupancy by the person pleading it, or by his father or some other person from whom he inherits. Here the first five years' occupancy relied on of the plaintiff were years during which the land was cultivated and held, not by the plaintiff alone, but by the plaintiff and Khoda Baksh. It seems to me that this is a distinct and different holding from the subsequent holding by the plaintiff alone. The plaintiff has therefore failed to prove that he cultivated or held the land for twelve years, and thereby acquired a right of occupancy. The appeal must be dismissed with costs.