

(1919) 07 CAL CK 0029

Calcutta High Court

Case No: None

Prasanna Kumar Sil

APPELLANT

Vs

Kamini Sundari Dasi and Others

RESPONDENT

Date of Decision: July 21, 1919**Acts Referred:**

- Bengal Landlord and Tenant Procedure Act, 1869 - Section 6

Citation: 55 Ind. Cas. 251**Hon'ble Judges:** Syed Shamsul Huda, J**Bench:** Single Bench

Judgement

1. This is a suit for ejectment on the ground that the defendant is an under-raiyat and is liable to ejectment upon notice, which the plaintiffs allege they served on him. It is common ground that Mousa was an occupancy raiyat in respect of the land in suit under certain Lakherajdars whose Lakheraj interest subsequently passed to the Gouripu Zemindars. The plaintiffs' case is that their father Ful Chand had purchased the occupancy right of Mousa about 40 years before suit and that after such purchase Mousa retained possession of the holding and was paying rent to Ful Chand as an under raiyat. The fact that Ful Chand was in receipt of such rent is not denied. The defendant, however, alleges that Ful Chand, somehow by arrangement with the Lakherajdars, he being their Pleader, got himself recognised as a middleman between the Zemindar and Mousa the tenant. It is denied that Ful Chand ever purchased the interest of Mousa. The defendant says that in 1894, he purchased the occupancy right from the heirs of Mousa and holds the land as such occupancy raiyat. The first Court dismissed the suit. That decision was modified by the Court of Appeal below. That Court granted a decree for ejectment from the agricultural area of the holding, but upheld the decree of the first Court in so far as it related to the homestead land.

2. On second appeal it is contended that the findings of the lower Appellate Court are conflating and upon those findings the decree passed by that Court cannot be

supported. I must admit that the findings regarding the purchase of Mousa's occupancy right by Ful Chand are neither clear nor wholly consistent. But at the same time it is not difficult to understand what the learned Judge really meant to find. It seems his opinion was that the direct evidence to prove such purchase was insufficient and unreliable, but he thought that upon the surrounding circumstances a strong presumption arose in favour of such purchase. He clearly rejected the story of the defendant that Ful Chand had become a middleman by some act of the malik. I, therefore, take it as a finding of fact that Ful Chand did purchase the occupancy right of Mousa.

3. The learned Vakil for the appellant next urges, even assuming that Ful Chand purchased the occupancy holding of Mousa. as after that purchase Mousa and his heirs as well as the defendant No. 1 who is a purchaser from Mousa's heirs remained in occupation of the land and cultivated it for more than 12 years, the defendant must be held to have acquired a right of occupancy. In support of the argument reliance is placed on the words of Section 6 of Act VIII of 1869, by which Act the present case is governed. The words of the section strongly support that contention. No authority has been quoted in support of the proposition that if Ful Chand acquired a right of occupancy by purchasing the interest of Mousa, although he never himself cultivated the land, no one accepting a tenancy under him could acquire a right of occupancy by cultivating the land for any number of years.

4. It appears from the examination of the provisions of that Act that the distinction made by Act VIII of 1885 between a raiyat and an under raiyat was not recognised by the Act of 1869. As a matter of fact the word "under raiyat" is nowhere to be found in that Act. The word "raiayat," therefore, included all classes of tenants who were actual cultivators of the soil, and it was immaterial whether such cultivator held his tenancy under a middleman or under a person who, though an occupancy raiyat originally, had placed another tenant in possession of the lands of his tenancy for purposes of cultivation unless, to quote the words of the section, such sub-lease was for a term or year by year." Here it is not shown that the sub lease by Ful Chand was of this description. The long possession of Mousa and his successors would seem to lead to a contrary conclusion. Upon this view of the case there was nothing to prevent Mousa or his heirs or the defendant No 1 as tenants under Ful Chand from acquiring a right of occupancy in accordance with the provisions of Section 6 of the Act. Although it is not necessary to consider the point specially as it was not argued on either side, I feel very grave doubt whether the words "sub-let year by year" are intended to convey the same meaning as "sub-let from year to year." "Sub-let. year by year" may mean sublet year after year, If it, means sub-let from year to year, it is difficult to see what must be the kind of sub-lease which an occupancy raiyat can and does ordinarily grant under which the sub lessee may himself acquire a right of occupancy. Such an interpretation will unduly contract the scope of the section. It has been contended that no one can acquire rights under the holder of another occupancy right. There may be some force in the argument but it is

inconclusive. Even under the present Act an under-raiyat may by custom acquire a right of occupancy and in such a case it would no doubt be an occupancy right held under an occupancy raiyat. Whether the acquisition of an occupancy right by a sub-tenant would effect a change in the status of the tenant is a question that need not be considered in this case.

5. It has been next argued that even assuming that the defendant had acquired a right of occupancy, that right came to an end when he entered into the compromise with the plaintiffs in the year 1912. It appears that in that year the plaintiffs brought a suit for rent against the defendant. The defendant raised various objections, but at last the case was compromised. By that compromise the lands of the holding were divided into two classes, lands forming part of the homestead and those that were purely agricultural. As regards the former, arrangement was made for payment of a particular sum as rent and there was a condition that the plaintiff would not be entitled to eject the defendant from the homestead land without special cause. But no express agreement regarding the right to eject the defendant was entered in respect of the agricultural lands, It was, "however, provided that those lands would remain in the occupation of the defendant as before.

6. Having regard to the terms of the compromise I am of opinion that so far as the agricultural lands are concerned, it left the tenant in the enjoyment of the right as he had before, and if he had acquired an occupancy right to those lands, by reason of the compromise he cannot be said to have lost that right. On this view of the case and holding as I do that the defendant had acquired a right of occupancy, I think no case for ejectment has been made out.

7. In support of the cross appeal it was contended by the learned Vakil for the respondents that the defendant was liable to be evicted from the homestead land as a special ground existed for such ejectment Both the Courts have held that the plaintiffs have failed to prove any special cause within the meaning of the terms of the compromise for ejecting the defendant from the homestead lands. This is a question of fact, and dealing with the case in second appeal I cannot interfere with the findings of the Courts below on this point. The cross-appeal is, therefore, dismissed with costs.

8. The appeal is decreed and the decree of the first Court is upheld. The defendant will be entitled to his costs of this litigation throughout.