(1869) 03 CAL CK 0028

Calcutta High Court

Case No: Special Appeal No. 1899 of 1868

W. Fitzpatrick		APPELLANT
	Vs	
George Wallace and Others		RESPONDENT

Date of Decision: March 12, 1869

Judgement

Norman, J.
The defendant in this case is a breeder of horses, and this suit is brought to recover possession of about 30 bigas of land in Basdeopur, occupied by the defendant for grazing purposes and as part of an exercise ground for the horses. The defendant, Mr. George Wallace, and his predecessor, Mr. Adolphus Wallace, have been in possession of the land from the year 1854, and have paid rent regularly to the zemindar to the end of 1272 (September 1865). The plaintiff claims under a lease granted by the zemindar, dated the 27th Bhadra 1268 (September 1861). The Principal Sudder Ameen, affirming the judgment of the first Court, dismissed the suit on the ground that the defendant had a right of occupancy under the 6th section of Act X of 1859.* From this decision the plaintiff appeals.

2. We might dismiss the appeal at once, because there is nothing to show that the defendant"s right of possession was ever legally determined, either by any notice to quit or demand of possession before the institution of the suit, or in any other way. The circumstances under which, notwithstanding the lease to the plaintiff, the defendant was allowed to continue to pay rent to the zemindar are apparently not explained.

3. It was contended that the judgment of the lower Appellate Court is erroneous on the ground that Mr. Wallace is not a ryot, and that land occupied for the breeding and training of horses, is not land used for agricultural purposes, so as to be within the purview of Act X of 1859.

4. The land in question was described in the argument for the special appellant as a race-course. It is a square, or nearly square piece of ground, which, according to the

plaintiff, is of great value for grazing purposes. One end of it is used as part of an exercise or training ground for the horses bred by Mr. Wallace. Several cases were cited upon the question as to description of land, in respect of which a right of occupancy may be gained, for instance, Kali Kishen Biswas v. Sreemutty Jankee (8 W.R., 251); Ranee Shurno Moye v. C. Blumhardt (9 W.R., 552); Khalut Chunder Ghose v. Minto (Ind. Jur., 426); and Chotuck Pandoo v. Mirza Inayat Ali [4 H.C.R., (N.W.P.), 49]. None of these cases go to the extent of saying that a right of occupancy cannot be gained in land used for grazing purposes or the breeding of cattle. If a right of occupancy can be gained in land used for breeding and grazing cattle, we think it may also be gained in land used for grazing horses.

5. The defendant formerly held under a lease which was not produced, and the contents of which were not in evidence. We have nothing before us to enable us to pronounce an opinion whether there was anything in that lease to prevent the defendant from acquiring a right of occupancy; and, therefore, we cannot say whether the decision of the lower Appellate Court that the defendant has a right of occupancy is correct. And we certainly cannot, and do not, say that the holding is such that a right of occupancy cannot be gained in respect of it. It is enough to say that the defendant''s interest, such as it was, is not shown to have been legally determined before the commencement of the suit. And on that ground we are of opinion that the decision of the lower Appellate Court should be upheld, and the appeal dismissed with costs.

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Right of occupancy of ryot cultivating or holding land for twelve years.	Sec. 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 potta or not, so long as he pays the rent payable on account of the same; but this rule does not apply to khomar, neejjote, 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 this section.