

(1878) 06 CAL CK 0025

Calcutta High Court

Case No: None

Koylash Chunder
Mojoomdar and
Others

APPELLANT

Vs

Bonomali Bajadur

RESPONDENT

Date of Decision: June 19, 1878

Citation: (1879) ILR (Cal) 135

Hon'ble Judges: Richard Garth, C.J; Jackson, J

Bench: Division Bench

Judgement

Richard Garth, C.J.

We think that there has been a mistake pervading the lower Courts in this case.

2. The question arose in this way: The plaintiff", an execution-creditor, attached certain lands held by his execution-debtors. The present defendant who is the occupancy ryot of those lands, objected to their being sold, inasmuch as the execution-debtors were his kurpha tenants, and that their interest in the land was not saleable without his (the occupancy ryot's) consent.

3. This objection prevailed; whereupon this suit was brought by the plaintiff against the occupancy ryot and the execution-debtors to establish his right to sell the judgment-debtor's interest.

4. The suit was dismissed in the first Court; but the Appellate Court gave the plaintiff a decree, on the ground that the kurpha tenants held under a jummai right from the defendant Bonomali Bajadur, the ryot.

5. The case then came before the High Court in special appeal, when it was remanded to try the question which the plaintiff then asked permission to raise-whether the jummai right of the kurpha tenants was transferable by the custom of the country? Now this of course meant, under the circumstances, whether the jummai right was transferable without the consent of the defendant, the

occupancy ryot, because the suit was brought for the very purpose of having the tenancy sold as against the last-mentioned defendant, and notwithstanding his objection.

6. It is obvious that this must have been the true meaning of the remand order, because, considering the relation which exists between an occupancy ryot and his kurpha tenant, it would certainly seem unreasonable that the right of the latter should be transferred without the consent of the former; the occupancy ryot of course being deeply interested in having as his kurpha tenant a person who can properly cultivate the soil, and secure to him his proper proportion of the profits.

7. But this very material consideration seems to have been entirely lost sight of by the Munsif who tried the case on remand.

8. The evidence produced at the trial showed, as the Munsif says in his judgment, that those kurpha tenancies were transferable with the consent of the occupancy ryots, which meant, we must presume, that they were not transferable without such consent; and yet, upon this evidence, the Munsif finds generally that these kurpha tenancies are transferable.

9. The case then came before the Subordinate Judge on appeal, who also ignored the real point in the case, and arrived at the same conclusion as the Munsif, upon the same evidence.

10. We think it clear that these decisions, as well as that of the learned Judge of this Court, have been founded upon misapprehension; and that the evidence before the Munsif led to one proper and legal conclusion only, viz., that the tenure of the kurpha tenant is not transferable without the consent of the occupancy ryot.

11. We think, therefore, that the judgment of all the Courts must be reversed, and the plaintiff's suit dismissed with all costs.

Jackson, J.

12. I would not only add that I never heard before that the question as to the possibility of selling a kurpha tenant's right could be raised, and it appears to me to be contrary to the nature of things that such a thing could happen.

13. The Subordinate Judge speaks of an admission by the defendant that his kurpha tenant had a right of occupancy; but if he did make such an admission, he admitted what the law forbids, because Section 6 of Beng. Act VIII of 1869 says that, under such circumstances, a right of occupancy cannot arise, and where a right of occupancy cannot arise a fortiori, there can be no transferable right.