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**(1869) 04 CAL CK 0028**

**Calcutta High Court**

**Case No:** Special Appeal No. 160 of 1869

Nanku Roy

APPELLANT

Vs

Mahabir Prasad and  
Others

RESPONDENT

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**Date of Decision:** April 29, 1869

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### **Judgement**

Glover, J.

This was a suit to recover possession of certain land, from which the plaintiff had been dispossessed by an order of the Deputy Collector, afterwards confirmed by the Collector, u/s 25 of Act X of 1859. On an application made to him by the zamindar, the Court of first instance went into the case, and on the merits decreed the plaintiff's claim; but the Subordinate Judge, on appeal, held that this being a suit to get rid of the Collector's order u/s 25 of Act X of 1859, it was not cognizable in any other Court than that of the Collector, and that the Munsiff had no jurisdiction; he therefore reversed the order of the first Court, and threw out the plaintiff's case. It seems to us quite clear that the Principal Sudder Ameen's decision in this matter was wrong. It has been laid down in the case of C.J. Phillips, decided on the 19th June 1863, that a suit to contest the orders of a Collector u/s 25 of Act X, may be brought either in the Collector's Court or in the Civil Court, as the case may be, and this ruling has been upheld in a Full Bench Decision of this Court, in the case of Mudun Mohan Roy v. Gourmonee Goopto Case No. 2313 of 1862, August 21st, 1863 (B.L.R. Sup. 31) and in many others, which it is needless to mention; parties suing to reverse a Collector's order under that section, may do so either in the Revenue or in the Civil Courts. It is quite clear, therefore, that the Munsiff had jurisdiction to try this case, and that the Subordinate Judge was wrong in setting aside his decision, on the ground that he had no jurisdiction. An objection has been taken by the pleader for the special appellant, that it would be useless to remand this case to the Subordinate Judge for trial on the merits, inasmuch as the plaintiff's own case discloses no right of action; that his tenure, as stated by himself, did not amount to more than a right of occupancy, which he claimed to have purchased; and that by a ruling of a Full Bench of this Court, in the case of Ojoodhya Pershad v. Mussamut Imam Bandi Begum Case No. 2609 of 1866,

May 31st 1867. See B.L.R. Sup. 725, it has been held that a right of occupancy is not saleable, that, therefore, the plaintiff, claiming to have purchased such a right, had, in reality, no ground on which to bring a suit at all. On this we observe that the objection to the plaintiff's right to bring this suit was never raised at any stage of the proceedings; that the defendant pleaded to the plaintiff's case, as it was brought by him, and he never objected to the title be set up; and we think that, at this eleventh hour it would be wrong to force the plaintiff to establish an altogether a new case, or to make him prove what the defendant had never, at any time, asked him to prove. Moreover, the judgment of the Full Bench does not go to the length of saying that, under every state of circumstance, a right to occupancy, or a right in land, which has extended over 12 years, is not transferable; as a general rule, no doubt, it lays down that, when a tenure was not transferable before the passing of Act X, the passing of that Act would not have the effect of rendering that tenure a transferable one, but it specifically exempted cases in which rights of occupancy, or tenures of a similar description, were transferable, by local custom. In this case for any thing that is before the Court, the plaintiff might have purchased this tenure, which he now seeks to recover under such a local custom, and it may very well be that the defendant's silence, and his pleading to the plaintiff's suit without raising any such objection, was a quasi admission that there was some local custom under which the tenure might have been transferred. However it may be, it has never been ruled by any judgment of this Court, that under no circumstances can a right of occupancy be transferred; and, therefore, there is no sufficient ground for saying that, on the very face of the plaintiff's case, there was no right of action.

2. The case must be remanded to the Court of the Subordinate Judge in order that he may try the case on the questions raised before the Munsiff, and pass a decision. Costs to follow the result.

Mitter, J.

I concur. I express no opinion as to whether such a suit as the present could have been instituted in the Collector's Court, but it is settled law that the Civil Courts have ample jurisdiction to entertain it.