

(1869) 05 CAL CK 0046

Calcutta High Court

Case No: Special Appeal No. 2805 of 1868

Damanulla Sirkar and Others

APPELLANT

Vs

Mamudi Nashio and Others

RESPONDENT

Date of Decision: May 29, 1869

Judgement

Macpherson, J.

In this case the plaintiffs sue to be restored to possession, on the ground that they have a right of occupancy. The case made by the plaint, is that one Hanif Mohammed Sirkar had two consecutive leases of the property (at different rents), extending from 1259 to 1271 (1852-3 to 1864-5); that, although the leases were in the name of Hanif, the other plaintiffs were jointly with him interested in them; and that, on the expiry of the last of the two leases in 1271 (1864-5), they held on for some little time longer until Chaitra 1272 (March and April 1866), when they were turned out by the defendants. The first Court has dismissed the suit; one of the grounds for such dismissal being that, on the face of the plaint, no such title, by right of occupancy, is shown as would entitle the plaintiffs to a decree.

2. The decision of the first Court was confirmed by the Judge on appeal; but the Judge does not accurately state, and does not decide this point as to whether the plaintiffs had or had not acquired a right of occupancy as alleged by them. In special appeal it is contended, amongst other grounds, that the case may be remanded, in order that the plaintiffs' title, i.e., their right of occupancy, may be inquired into; and it is urged that, supposing the plaintiffs to have held the land as alleged by them, that is to say, from 1259 to 1271 (1852-3 to 1864-5), under the two consecutive leases, and subsequently to have held over for some months, they have been in actual possession for more than 12 years, and, therefore, they have acquired a right of occupancy. The appellants' pleader relies on the language of sections 6 and 7 of Act X of 1859, as expressly bearing out his contention.

3. It appears to me that, on the face of the plaint, the suit was properly dismissed, because there is nothing in the mere fact of a tenant having been in possession for

12 years, under a series of pottas, each for a fixed term only, which gives him a right of occupancy, under Act X of 1859, especially in a case like the present, where the commencement of the tenancy is so recent, dating (as it does) no further back than 1259.

4. On behalf of the appellants, a case has been referred to--Haran Chunder Paul v. Mookta Soonduree 10 W.R. 113; but that case decides nothing more than that the particular patta then before the Court (the terms of which are not given), and the holding under it by the plaintiff in that suit and his father, or both of them, might possibly have created a right of occupancy in the plaintiff (in that suit). So far as that case goes, I perfectly concur in what is laid down there, admitting, as I do, that, if the circumstances now before us were other than those set forth in the plaint, the plaintiff might very possibly have a right of occupancy, although he had held under leases for fixed terms. Another case Roy Odyte Narain Singh v. Ubhurun Roy 4 W.R. Act X Rul. 1 was referred to for the appellants; but in my opinion, it makes more against the appellants than for them, though, no doubt, there are certain words in the judgment in that case which, when read by themselves, favor the view taken by the appellants.

5. On the other hand there are other cases reported: Sadhoo Jha v. Bhupwan Oopodhyia 5 W.R. Act X Rul. 17; Kebul Muhtoon v. Sheikh Sunnoo 5 W.R. Act X Rul. 80; and Puddo Monee Dossia v. Jholla Pally 7 W.R. 283, in which it has been expressly held that a ryot, who holds for more than 12 years under a potta or pottas granted for a fixed term or fixed terms of years, does not acquire a right of occupancy, by reason merely of his having held the land under his lease or leases for more than 12 years.

6. The plaintiffs' title in this case being solely under two leases having fixed terms, and the plaintiffs never having been in possession until they got the first lease in 1259; there is nothing in the plaint which leads to the legal conclusion that they have, or can have, a right of occupancy. On this ground, therefore, I think that the first Court was right in dismissing the plaintiffs' suit; and on that ground I would also dismiss this appeal with costs.

Jackson, J.

7. I also think that the appeal should be dismissed on the same ground as that which Mr. Justice Macpherson has just now stated. It is clear to me, on the face of the plaint, that the plaintiffs have no right of occupancy. They have held the land in dispute apparently for about 12 years under two terminable leases, and they have been dispossessed from the land in the year after those leases expired.

8. I am of opinion that, in this case, the provisions of section 7 of Act X of 1859 would apply, and that there was a sufficient express stipulation that the holding of the plaintiffs was to be for a certain fixed term only, and that the defendants had, accordingly, full right to remove them from that land at the close of that term. This

appeal must be dismissed with costs.