

(1868) 07 CAL CK 0035

Calcutta High Court

Case No: Special Appeal No. 3357 of 1857

Haran Chandra Pal

APPELLANT

Vs

Mukta Sundari Chowdhrair

RESPONDENT

Date of Decision: July 6, 1868

Judgement

Sir Barnes Peacock, Kt., C.J.

We think that the case must go back to the Principal Sadder Ameen to try whether the plaintiff had a right of occupancy. The substance of the plaint is that the plaintiff, by reason of the potta, and of the holding under it by his father and by himself, acquired a right of occupancy; that he under-let the land, and that the plaintiff in the rent suit recovered the rent from his (the present plaintiff's) ryots. The issues which were laid down by the Munsiff were: First, Whether or not the disputed land of the share was held by plaintiff, as his ryoti right appertaining to the jummai land, as alleged by him, and whether the potta was genuine or not; and, secondly, whether or not the plaintiff's jummai right has been injured by the rent-decree. There is no doubt that if the plaintiff had a right of occupancy, and ryots holding under him have been compelled to pay rent to the defendant, the plaintiff's right has been injured by the rent-decree. The real question to be tried, therefore, is whether the pottah, and the holding under it by the plaintiff and his father, or both of them, did create a right of occupancy in the plaintiff. Although the pottah may not have amounted to a perpetual ryoti lease, a holding under it for 12 years, if proved, would create a right of occupancy.

2. The Principal Sudder Ameen who tried the case did not correctly understand the effect of a right of occupancy. He says, " that a right of occupancy is not transferable, and that the plaintiff's position was similar to that of a tenant-at-will whose interest and tenancy-at-will are determined by his quitting the land." But the plaintiff did not transfer any right of occupancy, if he merely sub-let the land to ryots to hold under him. It is expressly provided by Section 6 of Act X of 1859, that the rule therein laid down does not as respects the actual cultivator apply to land Sub-let for a term of years by a ryot having a right of occupancy. It, therefore, recognizes the

right of a ryot having a right of occupancy to sublet the lands which he holds, although the ryot holding under him does not gain a right of occupancy as against him. If the plaintiff had a right of occupancy, his interest was not determined by under-letting the land or by putting any other person into possession of it as his ryot. In determining whether the plaintiff had a right of occupancy or not, the holding of his father must be taken into consideration by virtue of the last clause of Section 6. The decision of the Lower Appellate Court must be reversed with costs, and the case remanded to the Principal Sudder Ameen, to be re-tried upon the merits, having regard to the above remarks.

¹[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 pottah or not, so long as he pays the rent payable on account of the same; but this rule does not apply to khomar, neejote 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 lather, or other person from whom a ryot inherits, shall be deemed to be the holding of the ryot within the meaning of this section.]

Right of occupancy of ryot cultivating or holding land for 12 years.