APPELLATE CIVIL.

Before D. Chatterjee and Chapman JJ.

BHIKARIRAM BHAGAT

v.

MAHARAJ BAHADUR SINGH.*

1915

June 7.

Occupancy Right—Incidents of another tenancy under the same landlord but in different localities in the occupation of the occupancy raiyat—Bengal Tenancy Act (VIII of 1885), s. 182.

The provisions of the Bengal Tenancy Act are applicable to a tenancy for building a shop in a market in which the tenant afterwards came to reside, where the tenant has occupancy right in certain *jamas* under the same landlord in a different village from before the acquisition of the tenancy for building the shop.

Golam Mowla v. *Abdool Sowar Mondul* (1), *Protap Chandra Das* v. *Biseswar Pramanick* (2), *Kripa Nath Chakrabutty* v. *Sheikh Anu* (3) and *Harihar Chatterjee* v. *Dinu Bera* (4) referred to.

SECOND APPEAL by Bhikariram Bhagat and others, the defendants.

The appeal arose out of a suit for ejectment, on the defendants not complying with the notice to quit. In a previous suit by the plaintiff for ejectment against the defendants as trespassers on the lands in suit, it was decided that the defendants held the land in suit as tenants and could not therefore be ejected as trespassers. The case for the plaintiff was that the defendants

*Appeal from Appellate Decree, No. 572 of 1913, against the decree of E. Panton, District Judge of Murshidabad, dated Sep. 25, 1912, modifying the decree of Debendra Bijoy Bose, Subordintate Judge of Murshidabad, dated June 30, 1911.

(1) (1893) 13 C. L. J. 255.
(2) (1904) 9 C. W. N. 416.
(3) (1906) 10 C. W. N. 944.
(4) (1911) 14 C. L. J. 170.

1915

BHIKARIRAM BHAGAT v. MAHARAJ BAHADUR SINGH.

had been holding the lands without any permanent right for about ten years and had built a *pakka* house on one of the plots in dispute without any right or permission from the plaintiff.

The defendants denied possession of plots other than the one on which the house stood and contended, *inter alia*, that as they held many *raiyati jamas* under the plaintiff elsewhere, they held in their permanent occupancy right the remaining plot in dispute in the present suit where they had built their *pakka* house more than 12 years before the present suit with the knowledge of the plaintiff, that as such the suit was barred by estoppel and limitation, and that they were not liable to be ejected, and even if they were, they were entitled to compensation for the house. They further pleaded that no notice to quit was ever served on them, that the alleged notice was not legal and sufficient and that the plaintiff was not entitled to any compensation.

The learned Subordinate Judge held that the defendants were not in possession of plots other than the one on which the house stood and partially decreed the suit. He declared the plaintiff's right to eject the defendants on payment by the former of a sum of Rs. 1,200 as compensation for the buildings. Against this the plaintiff appealed, his contention being that the defendants were not entitled to any compensation. The scope of the appeal was widened by the cross-objection of the defendants in which they challenged the finding that they could be ejected at all. The learned District Judge allowed the appeal with costs and modified the decree of the lower Court by declaring that the defendants were entitled to remove the buildings from the land and allowed them six months' time from the decree to do this. This provision was made in lieu of the provision as to compensation in

the decree of the Court of first instance. The cross-objection was dismissed.

The defendants thereupon appealed to the High Court.

Babu Ramchandra Majumdar (with him *Babu Nagendranath Sen*), for the appellants. Section 182 of the Bengal Tenancy Act applies. An occupancy *raiyat* acquires the same right in other *jamas* that he may have in the locality. It is not even necessary for the acquisition of such right in the new *jama* that the tenant should hold under the same landlord: *Golam Mowla* v. *Abdool Sowar Mondul* (1), *Protap Chandra Das* v. *Biseswar Pramanick* (2), *Kripa Nath Chakrabutty* v. *Sheikh Anu* (3), *Harihar Chatterjee* v. *Dinu Bera* (4).

On the question of limitation, I contend that the District Judge is wrong in thinking that adverse possession for more than 12 years is needed to create a bar. Just 12 years is enough. We set up a permanent right. See section 45, Bengal Tenancy Act.

Babu Dwarka Nath Chakravarti, for the respondent. My learned friend has misunderstood the cases cited by him. The cases do not support the extreme contention that occupancy right may be acquired in all cases. It would be absurd to hold so. The original purpose of the tenancy must be looked to. Occupancy right can only be acquired in agricultural lands or in homestead. Where the original object was neither of the two, the tenant cannot acquire occupancy right. The landlord has rights as much as anybody else.

(1) (1893) 13 C. L. J. 255.
(2) (1904) 9 C. W. N. 416.
(3) (1906) 10 C. W. N. 944.
(4) (1911) 14 C. L. J. 170.

1915

BHIKARIRAM BHAGAT v. MAHARAJ BAHADUR SINGH.

[Judgment was reserved for a fortnight and then another week to allow parties to come to terms. The respondent was unwilling to settle the matter.]

D. CHATTERJEE AND CHAPMAN JJ. The defendants were *raiyats* holding certain *jamas* under the father of the plaintiff at Nalhati. When the Bokhara station on the Nalhati-Azimganj Railway (broad gauge) was opened, the father of the plaintiff wanted to establish a bazar. To do so he wanted shop-keepers to settle on his lands near the station. The defendant Bhikhari was asked to come and open a shop and he did come and was given some lands to build his shop which would necessarily be his dwelling house also. He built a *katcha* thatched house and held his shop there for a time. Then after a short time he built a *pakka* room and subsequently other *pakka* rooms and resided with his family there and held his shop as well. He acquired several *raiyati jamas* in this place also under the plaintiff, so that he is a *raiyat* under the plaintiff at Nalhati as well as this place called Sanko or Raipur Telkul. Being a *raiyat* at Nalhati he acquired the lands for building the shop where he resided and then he became a *raiyat* at Raipur Telkul or Sanko and resided in the shop-building and carried on his agricultural operations from there.

The plaintiff, at first, sued to evict him as a trespasser but failed, the Court holding that the defendants were tenants and could not be ejected without a proper notice.

This suit was then brought after the service of a notice. The question whether the tenancy is governed by the Transfer of Property Act or by the Bengal Tenancy Act was raised in the previous case, but in view of the finding on the question of notice the

1915

BHIKARIRAM BHAGAT v. MAHARAJ BAHADUR SINGH.

Court did not think it necessary to go into the question. In this case the trial Judge held that, as the land was originally taken for building a shop, it was governed by the Transfer of Property Act and made a decree for ejectment on the payment of Rs. 1,200 as compensation. On appeal by the plaintiff and cross-appeal by the defendants, the learned District Judge decreed the entire suit, allowing the defendants time to remove the materials of their *pakka* house.

In second appeal, it has been contended that both the Courts below are wrong in not applying the provision of the Bengal Tenancy Act. We think this contention is supported by a number of decisions of this Court dating back from 1893. In the case *Golam Mowla* v. *Abdool Sowar Mondul* (1), Mr. Justice Rampini held that if a *raiyat* holding *jotes* with occupancy rights in a village holds *bástu* land in the same village, not as a *raiyat* but separately from his *raiyati* holding, he would, in the absence of a local custom to the contrary, have a right of occupancy in the homestead also. It is not clear from the report whether the homestead and the jote were held under the same landlord. Then in the case of *Protap Chandra Das* v. *Biseswar Pramanick* (2), the homestead was under one landlord and the *jote* under another in the same village. Mr. Justice Geidt held that section 182 of the Bengal Tenancy Act applied. Mr. Justice Ghose did not think it necessary to go into the question. This was in 1904. Then in 1906 came the case of *Kripa Nath Chakrabutty* v. *Sheikh Anu* (3), in which Rampini and Mookerjee JJ. held that the homestead and the *raiyati* need not be in the same village or under the same landlord and section 182, Bengal Tenancy Act, applied when both were different. The above cases were followed by

(1) (1893) 13 C. L. J. 255. (2) (1904) 9 C. W. N. 416.
(3) (1906) 10 C. W. N. 944.

1915

BHIKARIRAM BHAGAT v. MAHARAJ BAHADUR SINGH.

Mookerjee and Teunon JJ. in the case of *Harihar Chatterjee* v. *Dinu Bera* (1), and it was held that for the application of section 182 of the Bengal Tenancy Act it was not necessary that the homestead and the *raiyati* should be either in the same village or under the same landlord. Under these rulings, the defendants would be holding the homestead lands at Sanko subject to the provisions of the Bengal Tenancy Act from the beginning.

But supposing that during the first 2 or 3 years during which the defendants merely held their shop and resided on the disputed land, and held *jotes* at Nalhati, they could not invoke the aid of section 182 of the Bengal Tenancy Act, there can be no manner of objection under a long course of rulings of this Court to their claiming the protection of that section after they became agriculturists at Sanko and carried on agriculture from their residence at Sanko which was also used as a shop. The incidents of their tenure of the homestead are, therefore, governed by the Bengal Tenancy Act as no local custom to the contrary is alleged or proved. The suit for ejectment, therefore, fails. As the parties have not been able to agree as to the rent payable for the homestead, that must form the subject of a separate suit.

The appeal is allowed and the suit of the plaintiff dismissed with costs in all Courts.

S. M. *Appeal allowed.*

(1) (1911) 14 C. L. J. 170.