APPELLATE CIVIL.

Before Woodroffe and Mullick JJ.

1915

June 4.

YAKUB ALI

v.

MEAJAN.*

Landlord and Tenant—Purchase of raiyats' interest by sole Landlord—Occupancy holding and occupancy right—Transferability—Merger—under-raiyat—Notice to quit—Ejectment—Bengal Tenancy Act (VIII of 1885) as amended by Bengal Act I of 1907, ss. 22 cl. (2), 49, 85 and 167.

The *raiyats* of certain lands in dispute executed a mortgage of their lands and put the mortgagee in possession. Subsequently the mortgagee settled the lands with under-*raiyats*. The superior landlord then brought a suit for rent against his *raiyats* and purchased the holding at a sale for arrears of rent. Thereafter, the landlord sold the permanent *raiyati* to one Meajan, who, after having taken a lease from the landlord and after having redeemed the mortgage, sold the same to the present plaintiffs. The plaintiffs, thereupon, brought a suit to eject the under-*raiyats*.

Held, that the occupancy still continued to exist after the purchase by the landlord.

Akhil Chandra Biswas v. *Hasan Ali Sadagar* (1) followed.

Held, also, that the landlord was able to transfer the holding to Meajan, through whom it came to the plaintiffs.

Held, also, that the under-*raiyats* continued to be under-*raiyats* and were duly served with notice to quit and must be ejected.

SECOND APPEAL by Yakub Ali and others, the plaintiffs.

The lands in dispute formed the *raiyati* lands of one Fakir Mahomed under a superior landlord. After

* Appeal from Appellate Decree, No. 203 of 1913, against the decree of Rajani Kanta Chatterjee, Subordinate Judge of Chittagong, dated Oct. 4, 1912, modifying the decree of Rebati Ranjan Mookerjee, Munsif of South Rauzan, dated Aug. 4, 1911.

(1) (1913) 19 C. W. N. 246.

Fakir's death his heirs mortgaged the *raiyati* lands to Ishan Chander Poddar, who subsequently obtained possession of the lands and settled the same with the predecessors of the defendants. Thereafter, the landlord brought a suit against the heirs of Fakir for arrears of rent and, in execution of the decree obtained in that suit, the lands in dispute were sold and purchased by the landlord himself, who subsequently sold the *raiyati* to Meajan. Meajan after having obtained the *etmani bandbast* in respect of the lands from the landlord, redeemed the mortgage executed in favour of Ishan. Meajan then sold his right, title and interest in the lands and the same were purchased by Anwar Ali, the predecessor of the present appellants. Anwar Ali then brought a suit for declaration for his *raiyati* and *etmani* rights and for *khas* possession against Meajan and the settled tenants, alleging that the rights of the mortgagee having passed, the settled tenants were merely under-tenants and that notice having been served upon the defendants under s. 49 of the Bengal Tenancy Act, they were not entitled to retain possession of the lands. The defendants contested that they held the lands as *raiyati* and as such were not liable to ejectment. The suit was decreed, but on appeal the decision of the lower Court was reversed. The plaintiffs, thereupon, appealed to the High Court.

Babu Prabodh Kumar Das, for the appellant. A distinction must be drawn between an occupancy holding and an occupancy right in the *raiyati* lands. The purchase of the *raiyati* by the landlord at a sale in execution of a rent decree did not bring about a merger of the occupancy holding. What became merged was the occupancy right only, the occupancy holding remaining intact: see *Ram Mohan Pal* v.

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Sheikh Kachu (1), *Jawadul Huq* v. *Ram Das Saha* (2) and *Miajan* v. *Minnat Ali* (3). The landlord had a perfect right to sell the holding and to give the purchaser a *raiyati* title. The appellants have acquired not only the purchaser's title, but also the rights of the mortgagee of the original *raiyat* by the redemption of the mortgage. They could, therefore, eject the respondents by notice under s. 49 of the Bengal Tenancy Act, as they had done. Furthermore, the defendants, other than the defendant Meajan, were in occupation of the lands as under-*raiyats* holding their tenure from the *raiyat* without a registered lease and without permission of the landlord. Such under-*raiyats* had no right to be on the land and could be ejected: see s. 85 of the Bengal Tenancy Act and *Peary Mohun Mookerjee* v. *Badul Chandra Bagdi* (4).

Babu Manmatha Nath Roy, for the respondents. When the landlord purchased the interest of the tenants at the execution sale, the *raiyati* became immediately merged in the landlord. Had there been other co-sharer landlords, there would have been no merger; for the interests of the landlords and of the tenants would not have vested in the same person or persons. The Full Bench case of *Ram Mohan Pal* v. *Sheikh Kachu* (1) supported the contention of the respondents; see the judgments of Ghose J. at page 393 and Harington J. at page 394 where the distinction between sole landlord and co-sharer landlords was pointed out. The Full Bench case was a case of co-sharer landlords and the ruling in *Jawadul Huq* v. *Ram Das Saha* (2) was followed in so far as the principles there laid down applied to co-sharer land-

(1) (1905) I. L. R. 32 Calc. 386; 9 C. W. N. 249.
(2) (1896) I. L. R. 24 Calc. 143.
(3) (1896) I. L. R. 24 Calc. 521.
(4) (1900) I. L. R. 28 Calc. 205.

lords; see the judgment of Maclean, C J., at page 392. In the present suit the purchase caused a merger of interests under s. 22 of the Bengal Tenancy Act and the landlord held the lands as landlord. The cases of *Girish Chandra Chowdhry* v. *Kedar Chandra Roy* (1) and *Ram Saran Poddar* v. *Mahomed Latif* (2) were also referred to.

[MULLICK J. referred to the case of *Akhil Chandra Biswas* v. *Hasan Ali Sadagar* (3)].

The question, that the under-*raiyats* had not been created by a registered instrument or by the consent of the landlord, did not arise in the present case. It was not raised in the Court below; on the contrary, notice under s. 49 of the Bengal Tenancy Act had been served on the respondents treating them as under-*raiyats*: see the cases of *Amirullah Mahomed* v. *Nazir Mahomed* (4) and *Lal Mahomed Sarkar* v. *Jagir Sheikh* (5). The respondents' right to the land was, therefore, valid. The original *raiyati* right having been merged in the landlord's rights immediately on his purchase, the respondents became *raiyats*. They could not have continued as under-*raiyats* as there was no intermediate tenancy. The very definition of under-*raiyat* implied the existence of an intermediate tenancy—a *raiyati*: see s. 4 of the Bengal Tenancy Act and the case of *Ram Mohan Pal* v. *Sheikh Kachu* (6). The relationship between the landlord and the under-*raiyats*, therefore, became that of landlord and *raiyats* by the mere fact of the purchase of the interest of the *raiyats* by the landlord. Having become *raiyats*, the respondents could not be ejected by notice under s. 49 of the Bengal Tenancy Act.

(1) (1899) I. L. R. 27 Calc. 473.
(2) (1898) 3 C. W. N. 62.
(3) (1913) 19 C. W. N. 246.
(4) (1904) I. L. R. 31 Calc. 932.
(5) (1909) 13 C. W. N. 913.
(6) (1905) I. L. R. 32 Calc. 386, 389; 9 C. W. N. 249.

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Furthermore, the respondents' rights had been considered in a suit brought by the respondent Meajan for possession. In that suit it was decided that unless and until Meajan had annulled the encumbrances under s. 167 of the Bengal Tenancy Act, Meajan could not get possession. This judgment was put in evidence by the respondents and it showed that the decision operated as res judicata. The interest of the respondents as well as that of the mortgagee were encumbrances and none of them was annulled. Therefore, on the basis of that judgment the appellants could not get possession of the lands in dispute without first annulling the encumbrances.

This appeal ought, therefore, to be dismissed.

Babu Prabodh Kumar Das was not called upon to reply.

WOODROFFE J. This appeal has been heard at very great length; but I think the appellant has established his argument. The facts are that under the landlord there was a *raiyat* of the name of Fakir Mahomed. Fakir Mahomed mortgaged the property to one Ishan Poddar who got possession. Ishan inducted the present defendants on the land. The landlord brought a suit for rent against the heirs of Fakir Mahomed and he bought up the holding at a sale for arrears of rent. The first and perhaps the main question in this appeal is, what is the effect of such purchase? Did it, as has been contended by the respondent, effect a complete merger of the holding and of the occupancy right in the landlord's right or did it, as the appellant contends, keep alive the occupancy holding though merging the occupancy right? This question has been discussed in the case of *Akil Chandra Biswas* v. *Hasan Ali Sadagar* (1),

(1) (1913) 19 C. W. N. 246.

where a distinction is drawn between an occupancy holding and an occupancy right. I should state here that this case has been decided on the old law as it existed prior to 1907. Following the principle enunciated in the decision to which I have just referred, I would hold that the occupancy holding still continued to exist even after the purchase by the landlord. The landlord then sold to one Meajan the permanent *raiyati* right. Meajan also took a lease from the landlord and the plaintiff has bought from Meajan and was now desirous to eject the defendant who had been inducted into possession, as stated.

The first Court held that he was entitled to a decree. This decision was reversed on appeal. For the reasons I have stated, the landlord was able to transfer the holding to Meajan through whom it came to the plaintiffs. The defendants continued to be what he was an under-*raiyat*, and it has been found that he has been duly served with notice. The learned Judge has referred at the conclusion of his judgment to section 167. In my opinion this does not stand in the way. A further question was sought to be argued, and that is this:—That in the suit to which Meajan was a party it was held that he could not get possession except by proceeding under s. 167. This question is not a point which has been either raised or dealt with in the judgment under appeal and therefore cannot be entertained now. The defendants having been duly served with notice to quit must be ejected.

I therefore would allow this appeal, set aside the judgment and decree of the lower Appellate Court and restore those of the first Court with costs of this Court and of the lower Appellate Court.

MULLICK J. I agree.

O. M. *Appeal allowed.*