MATRIMONIAL JURISDICTION.

Before Rankin C. J., C. C. Ghose and B. B. Ghose JJ.

BASANA SEN

v.

AGHORE NATH SEN.*

1928.

Aug. 6.

Marriage—Annulment of marriage—Special Marriage Act (III of 1872) as amended by Act XXX of 1923, s. 17, Sch. II.

Where a petitioner under Act III of 1872 asked for a declaration that a certain marriage contracted under that Act was a nullity on the ground that the bride had not completed the age of twenty one years and had not obtained the consent of her father at the time of her marriage,

Held that under the express terms of section 17 of Act III of 1872 such a marriage was null and void.

Defect in Schedule II of Act III of 1872 discussed.

The suit originally came up for hearing before the District Judge of Dacca, who found the following facts proved, viz., that the plaintiff, Basana Sen, was born on the 8th of June, 1908, that at the time of her marriage she was below the age of twenty-one and that her father had never given his consent to the marriage. The learned Judge, therefore, decreed the petitioner's suit and made this Reference to the High Court for the confirmation of his decree.

Mr. D. N. Sen (with *Mr. Srish Chandra Sen Gupta* and *Mr. Satyendra Kishore Ghose*), for the petitioner.

No one for the respondent.

RANKIN C. J. In this case, the learned District Judge of Dacca has had before him a petition under the Special Marriage Act of 1872, asking that a certain marriage may be declared null on the ground that the woman at the time of the marriage in 1926 had not completed the age of 21 years and had not obtained the consent of her father. It appears that this girl was a pupil of the Eden Intermediate College

* Declaratory Suit (for annulment of marriage), No. 7 of 1927, of the Court of the District Judge, Dacca.

at Dacca and that the respondent was a person who had been employed as her tutor and that, on the 9th April, 1926, they went before the Registrar and made declarations under the Special Marriage Act. Both of them are Hindus and the Special Marriage Act would not, therefore, apply to them at all, but for recent legislation, namely, Act XXX of 1923. It appears that the form of the declaration at the end of the schedule to the Special Marriage Act of 1872 contains a paragraph which has to be sworn to when the party has not completed the age of twenty one years to say that the consent of the father or guardian has been given. In this case, the declaration was correctly filled up, but this paragraph appears to have been omitted altogether. Neither of the parties appears to have committed perjury, therefore, in this matter. But it is certainly very remarkable that the forms given in the second schedule do not require the parties to state what their actual age is and, in particular whether or not each party is of the age of twenty one years. All that is required is that the bridegroom is to state that he is 18 years old and the bride is to state that she is 14 years old. This appears to me to open the door to great laxity. In this case, it appears to me that there has been some remissness in respect of the fact that the paragraph dealing with the consent of the father has apparently been omitted from the declaration altogether. I think this case is one which might usefully be made an occasion for a careful consideration of the working of this Act, in view of the recent legislation of 1923 and I propose to send a copy of the judgment of this Court in this case to the Government of Bengal in order that they may have an opportunity of considering the matter.

On the merits of the petition, I am satisfied that it has been now properly proved that at the time this pretended marriage was entered into, the girl did not have the consent of her father and, accordingly, under the express terms of section 17 of the Special Marriage Act, it was right for the learned District Judge to pronounce the order which he has pronounced

1928.

BASANA SEN v. AGHORE NATH SEN.

and which, in my judgment, ought now to be confirmed. The petitioner will have the costs of this application. The costs will be assessed at three gold mohurs.

C. C. GHOSE J. I agree.

B. B. GHOSE J. I agree.

O. U. A. *Decree confirmed.*

APPELLATE CIVIL.

Before Suhrawardy and Garlick JJ.

DAKSHABALA DASI

v.

RAJA MANDAL.*

1928.

Aug. 15.

Occupancy holding—Non-transferable occupancy holding, whether devisable by will—Bengal Tenancy Act (VIII of 1885), ss. 26, 178, sub-s. (3), cl. (d).

A *raiyat* having a non-transferable occupancy holding has as much right to make a testamentary disposition of the holding as he has to transfer it subject to the limitation mentioned in the Bengal Tenancy Act (VIII of 1885), namely, that it should not affect the interest of the landlord.

Chandra Binode Kundu v. *Ala Bux Dewan* (1) and *Jugeshar Misra* v. *Nath Koeri* (2) referred to.

Amulya Ratan Sircar v. *Tarini Nath Dey* (3), *Kunja Lal Roy* v. *Umesh Chandra Roy* (4), *and Umesh Chandra Dutta* v. *Joy Nath Das* (5) dissented from.

The Bengal Tenancy Act does not invest the occupancy *raiyat* with any particular right as against a third party, nor does it take away any right which he may have under the general law. The absence of mention of a right in the Bengal Tenancy Act, which does not deal completely with the law of immoveable property, does not necessarily prove that the right does not exist.

Kripa Sindhu Mukerjee v. *Annada Sundari Debi* (6) referred to.

SECOND APPEAL by the plaintiff, Dakshabala Dasi.

The plaintiff, who claimed to be the owner of an occupancy holding by inheritance from her husband, Shama Charan, who in his turn had acquired it by

*Appeal from Appellate Decree, No. 1762 of 1926, against the decree of Sasi Kumar Ghose, Subordinate Judge of Rajshahi, dated May 1, 1926, reversing the decree of Manmatha Nath Ghatak, Munsif of Naogaon, dated Feb. 27, 1922.

(1) (1920) I. L. R. 48 Calc. 184.
(2) (1922) I. L. R. 1 Pat. 317.
(3) (1914) I. L. R. 42 Calc. 254.
(4) (1914) 18 C. W. N. 1294.
(5) (1917) 22 C. W. N. 474.
(6) (1907) I. L. R. 35 Calc. 34.