APPELLATE CIVIL.

Before Suhrawardy and Graham JJ.

TARINI CHARAN SARDAR

v.

SRISH CHANDRA PAL*

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Feb. 2.

Occupancy raiyat—*Bengal Tenancy Act (VIII of 1885), s. 50 (2)—Presumption, whether can be claimed by occupancy* raiyat—*Sale proclamation, description, whether operates as estoppel against the purchaser*—Jote, *whether includes interests of* raiyat *at fixed rent or rate of rent—Area of holding, whether affects interpretation of the term* "jote"—Raiyat *at fixed rent, whether can be an occupancy* raiyat.

The purchaser of a holding which is described as a *jote* in the sale proclamation is entitled to the presumption under s. 50 (*2*) of the Bengal Tenancy Act.

The purchaser purchases the interest of the defaulting tenant whatever it is and is not estopped from claiming a higher or different right than what is described in the sale proclamation.

The term "*jote*" does not ordinarily mean occupancy holding. It means a holding in its general sense and includes the interest of a *raiyat* at a fixed rate. The interpretation of the term "*jote*" is not affected by the area of the holding.

Midnapur Zamindari Company, Ld. v. *Naresh Narayan Roy* (1), *Rajani Kantha Mukherjee* v. *Yusuf Ali* (2) and *Syed Nawab Ali Chowdry* v. *Hemanta Kumari Debi* (3) followed.

A *raiyat* at a fixed rate of rent can be an occupancy *raiyat.*

Dulhin Golab Koer v. *Balla Kurmi* (4), *Sarbeswar Patra* v. *Bijay Chand Mahtab* (5) and *Lakhi Charan Saha* v. *Hamid Ali* (6) referred to.

Jagabandhu Shaha v. *Magnamoyi Dassee* (7), *Guru Charan Nandi* v. *Sarab Ali* (8), *Bamandas Vidyasagar Bhattacharja* v. *Sadhu Majhi* (9) and *Prasanna Kumar Sen* v. *Durga Charan Chakravarti* (10) distinguished.

* Appeal from Appellate Decree, No. 1975 of 1925, against the decree of D. P. Ghose, Additional District Judge of 24-Parganas, dated April 6, 1925, reversing the decree of Surendra Nath Sen, Munsif of Baruipur, dated May 31, 1923.

(1) (1920) I. L. R. 48 Calc. 460; L. R. 48 I. A. 49.
(2) (1916) 21 C. W. N. 188.
(3) (1903) 8 C. W. N. 117.
(4) (1898) I. L. R. 25 Calc. 744.
(5) (1921) I. L. R. 49 Calc. 280.
(6) (1917) 27 C. L. J. 284.
(7) (1916) I. L. R. 44 Calc. 555.
(8) (1919) 23 C. W. N. 1041.
(9) (1921) 26 C. W. N. 945.
(10) (1922) I. L. R. 49 Calc. 919.

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SECOND APPEAL by the defendants.

The plaintiff brought a suit for recovery of arrears of rent, claiming enhancement on the ground that, in consequence of improvement made at his cost, there had been an increase in the productive powers of the land. The defendant was a tenant who had purchased the holding at an auction sale for arrears of rent due from the previous tenant, whose holding was described in the sale proclamation as a *jote*. The defendant contended *inter alia* that he was a *raiyat* at fixed rent, that rent had been paid at a uniform rate for more than 20 years and it was not liable to be enhanced, and that there had been no increase in the productive powers of the land as alleged by the plaintiff. The Munsif, who tried the suit, found that there was an increase in the productive powers of the land on account of improvement made at the cost of the landlord, but held that the defendant got the benefit of the presumption under section 50, clauses (*1*) and (*2*) of the Bengal Tenancy Act and disallowed the plaintiff's claim for enhancement of rent. On appeal, the Additional District Judge reversed the finding of the Munsif and held that the presumption raised by the uniform rate of rent for 20 years or more was rebutted by the landlord by the sale certificate, wherein the holding purchased by the defendant was described as a *jote*, that a *jote* ordinarily means an occupancy holding and an occupancy holding is under the law a holding, the rent of which is liable to enhancement. He, therefore, decreed the plaintiff's claim for enhancement of rent. The defendant thereupon appealed to the High Court.

Moulvi Syed Nasim Ali, for the appellant.

Babu Brojo Lal Chakravarti (with him *Mr. Rishindra Nath Sarkar and Babu Kali Sankar Sarkar*), for the respondent.

SUHRAWARDY J. This appeal is by the plaintiff in a suit for rent in respect of a holding in which he claimed rent for a period of four years at the old rate

and further claimed enhancement of rent on the ground that in consequence of improvements made at his cost there had been an increase in the productive power of the land. The trial Court held that the value of the land had increased on account of certain improvements made by the plaintiffs but that he was not entitled to claim enhanced rent on the ground that the defendant succeeded in raising the presumption in his favour under section 50 (*2*) Bengal Tenancy Act. The plaintiff appealed and the learned Additional District Judge held that in this particular case the tenant was not entitled to the presumption under section 50 (2) of the Bengal Tenancy Act though he had proved payment of rent at a uniform rate for a period of more than 20 years. The reasoning adopted by the learned Judge is this: In 1890 this *jote* along with another was sold in execution of a rent decree by the plaintiff and purchased by the defendant; in the sale proclamation the property sold was described as a *jote*; a *jote* ordinarily means an occupancy holding; and an occupancy holding is under the law a holding the rent of which is liable to be enhanced; the defendant having purchased the property as a *jote* must accept that position and cannot now turn round and say that he is a *raiyat* at fixed rate. In other words, the learned Judge, though he has not used that expression, is of opinion that, from the description of the property in the proclamation of sale under which he has purchased it, he is estopped from pleading that the right he purchased was anything different from the right of an occupancy holding. This view, in my opinion, is clearly erroneous. It has been conceded before us by the learned vakil for the respondent, and in my opinion rightly, that no question of estoppel arises in this case. The holding was described as a *jote* in the sale proclamation by the plaintiff and the defendant has purchased the interest of the defaulting tenants whatever that was. The decree-holder may in a proper case be bound by the description given by him in the sale proclamation; but to my knowledge no case has gone to

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the extent of holding that, because the purchaser purchased the property described in a particular way in the sale proclamation, he cannot claim a higher or different right which the judgment-debtor actually had and which the purchaser had really purchased.

Now, with regard to the assumption made by the learned Judge that the term "*jote*" ordinarily means occupancy holding there is high authority to hold that it is not so. In *Midnapur Zamindari Company, Ld.* v. *Naresh Narayan Roy* (1), the Judicial Committee observed "*jote*" is a general term and it is "not necessarily equivalent to a *raiyati jote* ". The same view was taken in this Court in *Rajani Kantha Mukherjee* v. *Yusuf Ali* (2) and *Syed Nawab Ali Chowdry* v. *Hemanta Kumari Debi* (3). These cases have been attempted to be distinguished on the ground that the holdings referred to in them consisted of more than one hundred *bighas* and therefore the presumption under the law was that they were tenures. The interpretation of the term "*jote*" in those cases does not seem to have been affected by the fact that the holdings under consideration were more than 100 *bighas*. After holding that the term "*jote*" did not necessarily mean a *raiyati* holding, the Courts proceeded to determine the nature of the tenancy in those cases and having found that the area was over 100 *bighas* they allowed the presumption of law to be raised in favour of their being tenures.

Even if the interest sold in 1890 were that of a *raiyat* at fixed rate, one would not expect any other description of the land except what was given in the sale proclamation, namely, that it was a "*jote*". If *jote* means a holding in its general sense, as it ordinarily does, the interest of a *raiyat* at a fixed rate will also be called a *jote* and it is too much to expect from the landlord that in the sale proclamation he would admit that the *jote* he was selling was held by the last tenant at a rent fixed in perpetuity. The mere description of the property sold in 1890 as a *jote* right

(1) (1920) I. L. R. 48 Calc. 460 : L. R. 48 I. A. 49.

(2) (1916) 21 C. W. N. 188.

(3) (1903) 8 C. W. N. 117.

does not in my opinion support the case of the plaintiff even if the defendant is held bound by it. It is still open to the Court to investigate as to what was sold and what was purchased by the defendant.

The Lower Appellate Court has observed, and it seems that its decision was to a great extent influenced by the view he took of the law, that a *raiyat* at a fixed rent or rate of rent cannot be an occupancy *raiyat*, though an occupancy *raiyat* by a subsequent grant can acquire the status of a *raiyat* at fixed rent. This is not the law as at present settled by the recent decisions of this Court. In the case of *Dulhin Golab Koer* v. *Balla Kurmi* (1) decided by a bench of five Judges it was held that the Settlement Officer was right in giving effect to the presumption that the *raiyats*, meaning ordinary *raiyats*, were holding at fixed rates of rent and in recording them as *raiyats* holding at fixed rates. The learned Judges agreed with the observations made by Ameer Ali J. in the case when it was before the Division Bench and one of the observations made by that learned Judge will be found at page 749 of the report: "Any *raiyat*, therefore, by whatever name he may be called, if he pleads and proves the particular state of facts provided in section 50 is entitled to its benefit". The last word upon the subject has been said in the case of *Sarbeswar Patra* v. *Bijay Chand Mahtab* (2), in which it was held that the *raiyat* holding land at a fixed rent may acquire a right of occupancy and claim protected interest under section 160 Bengal Tenancy Act. Richardson J. went into the history of the law on the subject and came to the conclusion that there is nothing in the law to prevent a *raiyat* at fixed rate acquiring a right of occupancy, in other words, both the rights may be combined in the same person, nor does the law make it impossible for an occupancy *raiyat* to obtain the right of a *raiyat* at fixed rate. These decisions and the other pronouncements on this subject in various cases of this Court created a class of *raiyats* not

(1) (1898) I. L. R. 25 Calc. 744. (2) (1921) I. L. R. 49 Calc. 280.

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enumerated in section 4, Bengal Tenancy Act, namely, occupancy *raiyats* holding at a fixed rent or rate of rent. Whether an occupancy *raiyat* who is proved to have held at a fixed rent or rate of rent from the time of the Permanent Settlement may be elevated to the status of a *raiyat* at fixed rate is not necessary for our present purpose to discuss. But it cannot be disputed that the law recognizes a *raiyat* with such rights. In the *proviso* to section 37, clause (*4*) of Act XI of 1859 one of the protected interests described in the section is that of a *raiyat* having a right of occupancy at a fixed rent. Reference may also be made in this connection to the decision in *Lakhi Charan Saha* v. *Hamid Ali* (1), where the same view has been taken.

The learned Judge in support of his view has referred to several cases which apparently have no bearing on the point under discussion. In *Jagabandhu Shaha* v. *Magnamoyi Dassee* (2) the case was not governed by the Bengal Tenancy Act, but was decided upon the general principles of law. In that case the tenants succeeded in proving uniform payment of rent for a period of 40 years. The learned Judges held that, without further proof of the origin and nature of the tenancy, it would not be possible, as a matter of law, to draw an inference from this fact alone that, at the inception of the tenancy, the rent was fixed in perpetuity, because the forbearance of the landlord in suing the tenant for a period of 40 years might be due to various reasons not inconsistent with the tenancy being an ordinary one. In *Guru Charan Nandi* v. *Sarab Ali* (3), there is a clear finding that the tenancy was created 40 years before the institution of the suit and, therefore, no presumption could be drawn from the fact of uniform payment of rent for that period. The learned Judge has also referred to two cases, one being the case of *Bamandas Vidyasagar Bhattacharia* v. *Sadhu Majhi* (4) and the other *Prasanna Kumar Sen* v. *Durga Charan Chakravarti* (5). I fail to see that these cases have any connection

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with the point involved in the present case. It was held in those cases that where the record of rights has been finally published, the tenant is precluded, by section 115, Bengal Tenancy Act, from claiming presumption under section 50 of that Act. The case before us is not based on the record of rights and there is no presumption one way or the other arising from it.

It has been contended before us that the finding of the Lower Appellate Court that the presumption under section 50, Bengal Tenancy Act, has been rebutted by the sale certificate in this case is a finding of fact. I am unable to agree with this contention. It seems to me to be arguing in a vicious circle. The Judge held that the defendant was bound by the description of the holding as a *jote* in the sale certificate and then he said that the production of the sale certificate rebutted the presumption under section 50, inasmuch as the sale certificate describes the holding sold as a *jote*.

The result of a careful consideration of the facts of this case and of the law is that the defendant, though he may be an occupancy *raiyat*, is still entitled to claim the presumption under section 50, Bengal Tenancy Act, and since he has proved in this case that he has paid rent at a uniform rate for more than 20 years he is entitled to such presumption and the question which has been put in the judgment of the learned Judge, namely, whether in consequence of the description of the holding as an ordinary *jote* in 1890 in the defendant's title deed the defendant is entitled to the benefit of the presumption under section 50, Bengal Tenancy Act, must be answered in the affirmative.

In the above view, this appeal is allowed. The judgment of the Lower Appellate Court is set aside and that of the Court of first instance restored with costs in all Courts.

GRAHAM J. I agree.

Appeal allowed.

A. A.