

CIVIL REVISION.

Before Jack J.

NARAYANCHANDRA BANERJI

v.

KAILASHCHANDRA CHATTOPADHYAY.*

1931

June 26.

Landlord and Tenant—Pre-emption—Landlord's right to pre-emption of occupancy holding sold as tenure or rāiyati at fixed rent, when accrues—Limitation—Bengal Tenancy Act (VIII of 1885), ss. 26F, 26J.

The landlord's right to pre-emption of an occupancy holding, which the tenant transfers by sale as a *rāiyati* at fixed rent, arises on his application to recover the balance of landlord's fee under section 26J of the Bengal Tenancy Act and he can make applications under sections 26J and 26F of the Act at the same time.

The period of two months provided in clause (3) of section 26J of the Bengal Tenancy Act is merely a provision fixing the time within which the landlord may apply to pre-empt. The provisions for limitation in section 26F do not apply to cases where the landlord makes the application and where no notice is issued under section 26C or 26E.

CIVIL RULE obtained by Narayanchandra Banerji, the purchaser from the tenant.

An occupancy *rāiyat*, one Haridas Dhar, sold his one-third share in the occupancy holding by a *kabâlâ*, dated the 6th March, 1930, in which his right was stated to be a *rāiyati* at fixed rent and the *kabâlâ* was registered under sections 12 and 18 of the Bengal Tenancy Act. The landlords opposite party received notice of the sale on the 8th April, 1930, and, on the 25th April following, they filed an application, claiming the balance of the landlord's fee under section 26J as also pre-emption under section 26F of the Bengal Tenancy Act, followed by the deposit in court of the amount of the consideration with compensation. The Munsif, who heard the case, allowed the application by his order, dated the 22nd December, 1930.

The purchaser, Narayanchandra Banerji, thereupon, moved the High Court under section 115

*Civil Revision, No. 313 of 1931, against the order of R. L. Chakrabarti, Second Munsif of Khulna, dated Dec. 22, 1930.

of the Civil Procedure Code and obtained the present Rule.

Hemendrachandra Sen for the petitioner.

Dr. Bijankumar Mukherji for the opposite party.

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JACK J. This Rule has been issued, calling upon the opposite party to show cause why an order of the Munsif, 2nd Court, at Khulna, under sections 26J and 26F should not be set aside on the ground that an application under section 26F must follow an application under section 26J and that the application under section 26F cannot be made until after the balance of the landlord's fees and compensation have been paid into court as provided by section 26C read with section 26J.

The contention of the petitioner depends upon the interpretation of section 26J, clause (3). That clause states: "The provisions of section 26F shall apply to the case of a transfer referred to in sub-section (1) and the immediate landlord shall be competent to exercise his rights of purchase under that section within two months of the date of payment into court of the balance of the landlord's transfer-fee and the compensation allowed." The petitioner is right in holding that the application under section 26J must first be made in order to make the provisions of section 26F applicable to a case to which the provisions of clause (1) of section 26J applies. But he is not right in urging that the landlord is not competent to exercise his rights of purchase under section 26F until the balance of the landlord's transfer-fee and compensation allowed have been paid. Such an interpretation of the section would mean that, if the balance of the landlord's transfer-fee and compensation are not paid, the landlord would not be competent to preempt under section 26F and that, in any case, he has got to wait until the tenant chooses to pay the balance of the landlord's transfer-fee. The position of the landlord, in such a case, would be much worse

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than that of the landlord whose tenant makes a *bona fide* transfer. This cannot be the intention of the legislature. Obviously, this portion of clause (3) of section 26J is merely a provision fixing the time within which the landlord may apply to pre-empt. The provisions for limitation in section 26F would not apply in this case (no notices having been issued under section 26C or 26E), thus making it necessary to provide a special period of limitation in the case in which an application is made by the landlord under section 26J. It has also been pointed out that this point was not at all raised in the court below. The judgment of the court below shows that applications were made at the same time under sections 26J and 26F and there seems to be no reason why this should not be allowed. This being the only ground on which this Rule was granted, this Rule is discharged with costs—hearing fee, one gold mohur.

Rule discharged.

A.A.