

APPELLATE CIVIL.

Before Nasim Ali and Khundkar JJ.

RASHBIHARI MANDAL

v.

AYESHA KHATUN.*

1934

July 10.

Under-rāiyat—Ejectment—Interest subsisting when new Act came into operation—Appeal by heirs of original under-rāiyat, if maintainable—Bengal Tenancy Act (VIII of 1885), ss. 48F, 49.

Where, at the time of the institution of an ejectment suit and on the date when the new Bengal Tenancy Act came into operation, the defendant's under-rāiyati interest had not been validly terminated, the original under-rāiyat (*i.e.*, the defendart) continued to be an under-rāiyat, as contemplated by section 48F, in respect of the land in suit and the under-rāiyati became heritable by operation of that section; consequently after his death his heirs inherited the holding and were entitled to continue the appeal.

SECOND APPEAL by the plaintiffs.

The facts of the case and the arguments in the appeal appear sufficiently in the judgment.

Bankimchandra Banerji for the appellants.

Bijankumar Mukherji for the respondents.

The judgment of the Court was as follows:—

The only point for determination in this appeal is whether the learned judge was right in holding that the heirs of the original under-rāiyat, who had acquired a right of occupancy by custom, were entitled to continue the appeal after the death of the original under-rāiyat. It appears that the suit for ejecting the original under-rāiyat, that is the predecessor-in-interest of the respondents, was instituted on the 11th February, 1928, on the ground that the under-rāiyati was determined by service of notice under section 49

*Appeal from Appellate Decree, No. 1820 of 1931, against the decree of Hemchandra Sanyal, Subordinate Judge of Noakhali, dated Nov. 22, 1930, reversing the decree of Bishnurath Sen, First Munsif of Lakshmipur, dated March 28, 1929.

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of the Bengal Tenancy Act of 1885. The plea of the original under-*râiyat*, who was the defendant in the suit, was that he had acquired a right of occupancy by custom and consequently he was not liable to be ejected by service of notice under section 49. While this suit was pending before the trial court, the new Bengal Tenancy Act came into operation on the 21st February, 1929. By virtue of section 48F of the new Act, the under-*râiyati* became heritable and, consequently, his heirs, after his death, would be entitled to possess the property as under-*râiyats*. The position would have been entirely different, if, at the date of the institution of the suit, the under-*râiyati* was terminated and the original under-*râiyat* was a trespasser on the land. In view of the finding of the lower appellate court, which has not been challenged before us, *viz.*, that, at the time of the institution of the suit, and on the date, when the new Act came into operation, the under-*râiyati* was not validly terminated and the original under-*râiyat* continued to be an under-*râiyat* as contemplated by section 48F in respect of the land in suit, the under-*râiyati* became heritable by the operation of that section and consequently, after his death, his heirs inherited the holding and were entitled to continue the appeal. We are, accordingly, of opinion that the learned judge's decision on this point is correct.

The appeal is, accordingly, dismissed with costs.

Appeal dismissed.

G. S.