APPELLATE CIVIL.

Before M. C. Ghose and Mukherjea JJ.

SHASHEE KUMAR MAJUMDAR

v.

GOLAP BANU.*

1936

Dec. 2, 3.

Bengal Tenancy—Creation of intermediate tenure by landlord in favour of râiyat—*Merger—Bengal Tenancy Act (VIII of 1885), s. 22.*

The creation by the landlord of an intermediate *shikmi tâluk* in favour of a *râiyat* in respect of the *râiyati* holding already in occupation of that *râiyat* does not effect a merger of the *râiyati* interest with the *shikmi* interest under s. 22 of the Bengal Tenancy Act.

Jogendra Krishna Roy v. *Shafar Ali* (1) followed.

Section 111 of the Transfer of Property Act has no application to agricultural leases in Bengal.

APPEAL FROM APPELLATE DECREE by the plaintiff.

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

Jitendra Kumar Sen Gupta for the appellant.

Bhagirath Chandra Das for the respondents.

Ramendra Mohan Majumdar for the Deputy Registrar.

MUKHERJEA J. This appeal raises a short and an interesting point of law. The plaintiff's case is that the lands in suit were comprised in four *râiyati* holdings which belonged to one Lal Miya. The immediate landlord was one Ajijulla Munshi, who

*Appeal from Appellate Decree, No. 1660 of 1934, against the decree of Amrita Lal Banerji, Additional Subordinate Judge of Noakhali dated Mar. 17, 1934, modifying the decree of Raj Kumar Datta, Third Munsif of Sudharam, dated Mar. 29, 1933.

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was the proprietor of the estate within which these lands were situate. On July 15, 1918, Lal Miya got a *shikmi tâluki* right under the proprietor by a *pâttâ*, which was granted by Ajijulla, and he became thereby the landlord in respect of the four *râiyati* holdings held by him. The *shikmi tâluk* was sold at a sale under Reg. VIII of 1819 on May 16, 1931, and the purchaser was the plaintiff. The suit has now been commenced by the plaintiff for recovery of possession of the lands in suit on the ground that he, being a purchaser at a sale under Reg. VIII of 1819 and having annulled all incumbrances, Lal Miya had no right to remain in possession.

The trial Court decreed the suit in part. It gave the plaintiff a decree with regard to the lands which were recorded in *khatiyâns* Nos. 292 and 276, holding that the principle of merger applied and the *râiyati* interest of Lal Miya in respect of these plots of land merged in the superior rights of a *shikmi tâlukdâr* on the acquisition of the *shikmi* in July, 1918. With regard to two other *râiyati* holdings, the suit was dismissed on the ground that Lal Miya had other co-sharers and consequently the principle of merger had no application. Against this decision, an appeal was taken by the defendants to the lower appellate Court and the Additional Subordinate Judge reversed the decision of the trial Court with regard to the lands of *khatiyân* No. 292, holding *inter alia* that the principle of merger had no application and the case did not come within the purview of s. 22 of the Bengal Tenancy Act. With regard to the lands recorded in *khatiyân* No. 276, he has held that there is no merger but that the plaintiff is entitled to get *khâs* possession on the ground that the *râiyats* had really abandoned the holding. Against this decree of the lower appellate Court, there has been this Second Appeal preferred by the plaintiff and the appeal is limited to the lands which are recorded in *khatiyân* No. 292.

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Mr. Sen Gupta, who appears in support of the appeal, has contended before us that the decision of the Court of appeal below was wrong and that the case would be governed by s. 22 of the Bengal Tenancy Act. Now, it is quite clear that the lease, being an agricultural lease, s. 111 of the Transfer of Property Act has got no application and the case must be decided entirely upon the provision contained in s. 22 of the Bengal Tenancy Act. It is not disputed that, prior to the creation of the *shikmi tâluk*, the immediate landlord of the *râiyat* was the proprietor of the estate and it cannot be said that, by the creation of the *shikmi*, the interest of the *râiyat* and that of the immediate landlord, namely, the proprietor, had coalesced. The immediate landlord did not acquire this interest of the *râiyat* by transfer, succession or otherwise but he carved out an intermediate tenure-holder's interest and interposed it between himself and the *râiyat*, though in this case the intermediate tenure-holder was no other than the *râiyat* himself. We think that s. 22 of the Bengal Tenancy Act pre-supposes the existence of the superior interest as a separate entity before the act of transfer or succession could effect the merger. In other words, the two interests must have separate existence before the question of merger can come in. Here, before the *shikmi pâttâ* was executed, the *tâluki* interest, into which the *râiyati* interest is said to have merged, had no existence and we are unable to hold that when the immediate landlord simply creates an intermediate tenancy right between him and the actual *râiyat*, there would be a merger under s. 22 of the Bengal Tenancy Act simply because the intermediate tenant happened to be the *râiyat*. The view, which we are taking, is supported by a decision of this Court in the case of *Jogendra Krishna Roy* v. *Shafar Ali* (1), and in that case Sir Asutosh Mookerjee sitting with Mr. Justice Chotzner

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laid down the law that s. 22 would have no application where the *râiyat* himself subsequently takes a tenure-holder's right from the immediate landlord. Mr. Sen Gupta has drawn our attention to another decision of this Court in the case of *Manners* v. *Satroghan Das* (1). The facts are not very clear from the judgment and the decision also appears to us to be far from clear. What happened in that case was that there was a certain tenure-holder for a term under the *mohanta* of an *âsthâl*, who created a sub-lease in favour of the appellant Mr. Manners. The interest of the *thikâ* tenure-holder expired in the year 1304 Fasli and it seems that before that he had transferred by a *kabâlâ* his right to Mr. Manners. Mr. Manners subsequently took a *thikâ* lease himself from the *mohanta* for a period of fifteen years from 1304 to 1318 and as he did not quit the land after 1318, the suit was instituted by the superior landlords. Their Lordships held *inter alia* that if Mr. Manners was a cultivating *râiyat* and, by taking the *thikâ* lease from the *mohant* he became subsequently a tenure-holder, the entire interest of the landlord and the *râiyat*, having been vested in the same person, Mr. Manners could not have any right to hold the land as a tenant under s. 22, Bengal Tenancy Act. It is difficult for us to appreciate the reasoning of this judgment, because it seems, in the first place, that s. 22 would have absolutely no application to a case like this where the tenure-holder was not a permanent tenure-holder but held his tenure for a term of fifteen years only. But leaving aside this point, even, if we assume that s. 22 applies, we can justify the decision on the ground that here the *râiyati* lease came into existence subsequent to the creation of the tenure and by the *kabâlâ* which the old tenure-holder executed apparently in favour of Mr. Manners, the two interests of the immediate landlord and of the *râiyat* must have coalesced at that

(1) (1916) 20 C. W. N. 800.

time. The decision is not supported by any reasoning and we prefer to follow the decision of Sir Asutosh Mookerjee in the case of *Jogendra Krishna Roy* v. *Shafar Ali* (1).

It may be pointed out here that, apart from s. 22 of the Bengal Tenancy Act, there is no general law of merger applicable to agricultural tenancies in this country and, though the principle of English Common Law was inflexible and applied irrespective of the intention of the parties, in equity, it always depended upon circumstances and was governed by the intention of parties or the purpose of justice. In our opinion, it is neither just nor proper to stretch the language of s. 22 of the Bengal Tenancy Act beyond what it clearly lays down.

In the above view of the case, we dismiss the appeal. There will be no order as to costs.

M. C. GHOSE J. I agree.

Appeal dismissed.

A. K. D.

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