APPELLATE CIVIL.

Before Nasim Ali and Remfry JJ.

DWARKA MANDAL

v.

NALINEE KANTA MITRA.*

1937

May 19, 20.

*Bengal Tenancy—Landlord and tenant—Under-*râiyat, *if can transfer his holding by sub-lease—Ejectment suit against sub-lessee by purchaser of under-*râiyat's *right, title and interest under a money decree, if maintainable—Bengal Tenancy Act (VIII of 1885), ss. 4, 49, 159, 160*(d).

Under s. 4(*3*) of the Bengal Tenancy Act an under-*râiyat* has power to transfer his holding by way of sub-lease; and the sub-lessees are tenants.

Such sub-lessees (after acquisition of occupancy right in the holding by custom) cannot be evicted by the *râiyat* who purchases only the right, title and interest of his under-*râiyat* in the holding in execution of a decree against him.

Parushulla Sheikh v *Sital Chandra Das* (1) approved.

Gopal Mollah v. *Mafidannessa* (2) and *Jnanendra Nath Mustaphi* v. *Dakhiram Santra* (3) distinguished.

APPEAL FROM APPELLATE DECREE preferred by the defendant No. 2.

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

Amiruddin Ahmad for the appellant.

Panchanan Ghosh, Jateendra Nath Sanyal and *Jay Gopal Ghosh* for the respondents.

Abdul Quasem for the Deputy Registrar.

The judgment of the Court was as follows:—

This is an appeal from the decision of the District Judge of Jessore dated May 4, 1935, reversing the

*Appeal from Appellate Decree, No. 1214 of 1935, against the decree of K. C. Das Gupta, District Judge of Jessore, dated May 4, 1935, reversing the decree of Ramani Ranjan Biswas, Third Munsif of Narail, dated Jan. 11, 1935.

(1) (1915) 19 C. W. N. 1110. (2) [1920] A. I. R. (Cal.) 842.
(3) (1924) 28 C. W. N. 865.

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decision of the Third Court of the Munsif at Narail dated January 11, 1935. The suit out of which this appeal arises was a suit for ejectment. The facts which are not now in dispute are these:—

Defendant No. 2 was inducted into the disputed land as a tenant in 1916 by defendant No. 1, who held this land along with other lands as an under-*râiyat* under the plaintiff. Defendant No. 2 thereafter acquired occupancy right to the land by local custom. The plaintiff purchased the under-*râiyati* of defendant No. 1 in the year 1925 at a sale held in execution of a decree against defendant No. 1 for arrears of rent due in respect thereof. By this purchase, however, he acquired simply the right, title and interest of defendant No. 1, as the sale was not under the provisions of Chapter XIV of the Bengal Tenancy Act. Thereafter the plaintiff obtained possession through Court but was dispossessed by defendant No. 2.

On these facts the trial Court dismissed the plaintiff's claim for ejectment. On appeal its decision has been reversed and a decree for ejectment has been passed in favour of the plaintiff. Hence this Second Appeal by defendant No. 2.

The only point for determination in this appeal is whether defendant No. 2 is liable to be ejected from the disputed land. It is contended on behalf of the plaintiff that defendant No. 2 is a trespasser on the land and consequently the plaintiff is entitled to recover possession. The contention of the learned advocate is that defendant No. 2 has no right to the disputed land, inasmuch as defendant No. 1 had no right to sub-let the land to defendant No. 2. It is also contended that even if defendant No. 1 had any such right, the sub-lease in favour of defendant No. 2 created by defendant No. 1 was not binding on the plaintiff, inasmuch as the plaintiff never gave his consent to this sub-lease. Certain cases were cited

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before us to establish the proposition that an under-*râiyat* has no right to transfer his holding. In all the cases cited before us, excepting the case of *Gopal Mollah* v. *Mafidannessa* (1), the transfers were transfers other than leases. In *Gopal Mollah's* case (1) the learned Judges relying on the decisions in which the transfers were transfers other than sub-leases held that an under-*râiyat* had no right to sub-let his under-*râiyati* holding. The learned advocate for the appellant, however, relied upon the decision of this Court in the case of *Parushulla Sheikh* v. *Sital Chandra Das* (2), where the learned Judges took the view that an under-*râiyat* had right to sub-let his under-*râiyati*. The observations of the learned Judges in the case of *Jnanendra Nath Mustaphi* v. *Dukhiram Santra* (3) support the view also that the right of an under-*râiyat* is not transferable. But this again is based on the cases in which the transfer was other than transfer by leases.

An under-*râiyat* is a tenant under s. 4 of the Bengal Tenancy Act. He may be a tenant directly under a *râiyat*. He may be a tenant under an under-*râiyat* as well. Whether he is a tenant holding immediately or mediately under a *râiyat*, he is not a trespasser but a tenant having the *status* of an under-*râiyat*. Section 4(*3*) gives an indication that under-*râiyats* have power to sublet their under-*râiyatis* and the sub-lessees are tenants. Defendant No. 2 therefore became an under-*râiyat* under defendant No. 1 in 1916. He acquired also occupancy right in the disputed land by local custom. See the record-of-rights published in the year 1922 and the finding of the trial Court which has not been reversed in appeal by the lower appellate Court. The position then is that when the plaintiff purchased the right, title and interest of defendant No. 1 in the year 1925, defendant No. 2 was on the land as an under-*râiyat* with a right of occupancy by custom. The contention of the

(1) [1920] A. I. R. (Cal.) 842. (2) (1915) 19 C. W. N. 1110.
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learned advocate for the plaintiff is that defendant No. 2 may have been an under-*râiyat* so far as defendant No. 1 is concerned, but *vis-a-vis* plaintiff he is a trespasser, as there was no relationship of landlord and tenant between the plaintiff and the defendant No. 2, there being no privity of contract between them at any time. The relationship of landlord and tenant, however, under the Bengal Tenancy Act is not always governed by a contract. It is also to be governed by status. See the case of *Berhamdut Misser* v. *Ramji Ram* (1). The English rule that the relationship of landlord and tenant can be established by mutual agreement does not apply to the agricultural lands in this country. If a *râiyat* is inducted into the land by a trespasser, he is entitled to resist eviction by the real owner provided there had been *bona fides* both on the person inducted and the person inducting. See *Binad Lal Pakrashi's* case (2). If a settled *râiyat* of a village takes some land for the purpose of cultivation for a term of years with the express stipulation that he would have no right to hold it after the expiration of the term, he does not become a trespasser after the expiration of the term. He acquires occupancy right in the land by virtue of his status as a settled *râiyat* of the village and becomes a tenant on the land. If the landlord of the plaintiff had purchased the plaintiff's interest in execution of a decree for arrears of rent under Chapter XIV of the Bengal Tenancy Act, he could not have ejected the defendant No. 2 from the disputed land though there was no privity of contract between him and defendant No. 2 and though he never gave his consent to the sub-lease in favour of defendant No. 2. See ss. 159 and 160(*d*) of the Bengal Tenancy Act and the case of *Sonaton Dafadar* v. *Daulat Gazi* (3). It has been decided by this Court that an under-*râiyat* coming under a lease from a Hindu widow and acquiring occupancy right

(1) (1913) 18 C. W. N. 466, 469. (2) (1893) I. L. R. 20 Cal. 708

(3) (1932) 36 C. W. N. 400.

by custom is protected from eviction by the reversioners, although the latter are not bound by the lease granted by the widow. See the case of *Arjun Chandra Mandal* v. *Trailakya Mani Dasi* (1). For the aforesaid reasons I am of opinion that the plaintiff who has purchased the right, title and interest of defendant No. 1 in 1925 has no right to eject defendant No. 2 who has acquired the status of an under-*râiyat* with a right of occupancy. It is not disputed in this case that before the amending Bengal Tenancy Act of 1928 came into operation, the tenancy of defendant No. 2 was not determined according to the provisions of s. 49 of the Bengal Tenancy Act. The rights of the parties being admittedly governed by the law as it stood before the amending Act came into operation, defendant No. 2 is entitled to remain on the land.

The result therefore is that this appeal is allowed, the judgment and decree of the lower appellate Court are set aside and those of the trial Court are restored with costs in this Court as well as in the lower appellate Court.

Appeal allowed.

A. K. D.

(1) (1932) 37 C. W. N. 333.