

## APPELLATE CIVIL.

*Before Mukherjea J.*

TRAILOKYA NATH PAL

v.

AMBIKA CHARAN DE\*.

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May 18, 19.

*Bengal Tenancy—Occupancy rāiyat dying intestate without heir —Right of re-entry of landlord—Bengal Tenancy Act (VIII of 1885), s. 26.*

Under s. 26 of the Bengal Tenancy Act, on any one of the joint *rāiyats* of an occupancy holding dying intestate without leaving any heir, the occupancy right of that *rāiyat* in respect of his share in the holding is extinguished to the extent of that share; and the landlord can take possession of the same jointly with the other tenants.

*Garbhu Mahton v. Khudaijatunnissa* (1) followed.

The principle of joint tenancy with its incidents of rights by survivorship is not the rule of this country.

APPEAL FROM APPELLATE DECREE preferred by the defendants.

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

*Gopendra Nath Das* for the appellants.

*Jitendra Kumar Sen Gupta* for the respondent.

MUKHERJEA J. This appeal raises an interesting point of law which turns upon the interpretation of s. 26, Bengal Tenancy Act.

The facts of the case are rather long and complicated, but the controversy in this appeal centres round the short point, as to whether plaintiff No. 1 has established his *rāiyati* right to a moiety share of the plot of land appertaining to *khatiyān* No. 233 of

\*Appeal from Appellate Decree, No. 326 of 1935, against the decree of P. B. Banerji, District Judge of Faridpur, dated Sep. 1, 1934, modifying the decree of Biswa Nath Sen, Munsif of Faridpur, dated Mar. 29, 1934.

*mouzá* Guha Lakhimpur. The Court of appeal below has decided in his favour and defendants Nos. 1 to 3 have preferred this Second Appeal. The *râiyati* right in respect of these plots of land was vested admittedly in one Haran Chandra Das, who held the same as an occupancy *râiyat* under two sets of landlords, *viz.*, the Guhas and the Faridpur Loan Office. Haran died leaving three sons, Kunja, Kailash and Durga, and Kailash died later on, leaving as his only heir a son named Panchanan. In the year 1925, Kunja and Panchanan sold their two-thirds share of the *râiyati* interest to one Krishna Kanta and the names of Krishna Kanta and Durga were recorded as tenants in respect of the holding in the *sheristâ* of Faridpur Loan Office (defendant No. 4) who were fractional landlords to the extent of 8 annas share. Durga died afterwards leaving a widow Kusum Kamini, who inherited his third share. In July 1928, Krishna Kanta died and in October following, Kusum Kamini sold her one-third interest in the *râiyati* to Bishakha Baishnabi, who is defendant No. 3 in the suit and who claimed to be the wife of Krishna Kanta. In 1932, Bishakha purported to sell the entire 16 annas share of the *râiyati* to defendants Nos. 1 and 2, one-third of which was her acquisition by purchase from Kusum Kamini, and the remaining two-thirds she claimed as widow and heir of Krishna Kanta. It has been found by both the Courts below and is not disputed in appeal that, as a matter of fact, Bishakha Baisnabi was not the wife of Krishna Kanta but was his mistress, and that Krishna Kanta died without any heir. Upon this, the Faridpur Loan Office treated the two-thirds share of Krishna Kanta as being vested in the landlords under the provisions of s. 26 of the Bengal Tenancy Act. With regard to the remaining one-third share, it was abandoned by Kusum Kamini by transferring the same to Bishakha, and under these circumstances the Faridpur Loan Office treating the holding as being in their *khâs* possession to the extent of a moiety share settled that share with plaintiff

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No. 1 in the year 1930. The whole question is as to whether the Court of appeal below was right in holding that the plaintiff No. 1 got a good title to a moiety share of the holding by virtue of the settlement granted by the Faridpur Loan Office. Mr. Das, who appears in support of the appeal, has contended before me that the Court of appeal below was wrong in holding that two-thirds share of the holding vested in the landlords under s. 26 of the Bengal Tenancy Act on the death of Krishna Kanta. According to him, when one of the joint *râiyats* dies, the share of the deceased *râiyat* does not go to the landlord, as s. 26 contemplates the death of the sole *râiyat* or the entire body of *râiyats*, and this share passes by survivorship to the other joint tenants. In this view of the case, Kusum Kamini became the 16 annas *râiyat*, and as she purported to transfer only a third share to Bishakha, the remaining two-thirds share still remained in her. Consequently there was no abandonment, which would entitle the landlords to re-enter, and the settlement granted by defendant No. 4 could not give any valid title to plaintiff No. 1.

Now, s. 26 of the Bengal Tenancy Act does not directly provide that the holding of an occupancy *râiyat* would revert to the landlord in case he dies without any heir. It simply says that when the *râiyat* leaves no heir behind him, and his other properties go by escheat to the Crown, the occupancy right is extinguished. What is extinguished is not the holding but the occupancy right, and so the holding remains stripped off the occupancy right. If the sole *râiyat* is dead the holding remains without any tenant, and the landlord consequently is entitled to re-enter. Vide *Garbhu Mahton v. Khudaijatunnissa* (1). Now what difference would it make, if there are more than one tenant holding jointly and one of them dies? Mr. Das argues that s. 26 of the Bengal Tenancy Act does not apply to such a case at all. This contention

(1) (1925) I. L. R. 4 Pat. 774.

does not appear to me to be tenable. The proviso of s. 26 must be taken to have the same scope and extent as the main provision itself upon which it is engrafted as an exception. As it cannot be maintained that in the case of one of several joint tenants dying, leaving an heir behind him, his interest would not devolve on his heir, so in case of death without leaving any heir, the occupancy right must be deemed to be extinguished *pro tanto*, so far as the share of the deceased tenant extended.

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The question now arises, whether, under such circumstances, the landlord can take possession of the holding to the extent of the share of the deceased tenant? A negative answer is sought to be given to this question by suggesting that the share of the deceased tenant would pass by survivorship to the remaining tenants, and the landlord cannot re-enter so long as a single tenant remains in possession of the land. I do not think that death of one tenant would have the effect of enlarging the rights of the surviving tenant, and they would acquire an interest over the whole holding. In the first place, the principle of joint tenancy with its incident of rights by survivorship is not the rule of this country. *Vide* the observations of the Judicial Committee in *Jogeswar Narain Deo v. Ram Chandra Dutt* (1) and *Bahu Rani v. Rajendra Bakhsh Singh* (2). On no other conceivable principle of law, can the appreciation of the rights of the co-sharers may be justified.

In the second place, extinction of occupancy right in respect of the share of the deceased tenant, though it does not destroy the holding, certainly effects a disruption of its integrity and original character. One portion of the holding remains invested with occupancy right, while the other portion is denuded of it. In my opinion, the position is somewhat analogous to

(1) (1896) I. L. R. 23 Cal. 670 ;  
 L. R. 23 I. A. 37.

(2) (1933) I. L. R. 8 Luck. 121 ;  
 L. R. 60 I. A. 95.

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what happens in case of surrender or relinquishment of his interest by one of several joint tenants. The interest of the other co-sharers is not in any way enlarged, and the landlord can take possession of the relinquished share and hold it jointly with the other tenants. Vide *Peary Mohun Mondal v. Radhika Mohun Hazra* (1). I would hold, therefore, that the Faridpur Loan Office was entitled to take *khâs* possession of the *râiyati* right of Krishna Kanta, on the death of the latter, to the extent of his share. Even if we assume that the landlord could not re-enter so long as the other tenant, who owned the one-third share, remained in the land, it would not assist Mr. Das's client in the least. Kusum Kamini could not have more than one-third share in the *râiyati* as I have stated above, and as she transferred that interest to Bishakha in the year 1928, there was complete abandonment in law which would entitle the landlords to re-enter. In my view, therefore, the decision of the Court of appeal below is correct.

The appeal stands dismissed with costs, 2 gold mohurs.

*Appeal dismissed.*

A.K.D.

(1) (1903) 8 C. W. N. 315.