

CIVIL REVISION.

Before Edgley J.

ABDUL MAJID

v.

ALTAB ALI.*

1940

Feb. 2.

Pre-emption—*Co-sharer tenant of a holding, Claim by—Recognition of the co-sharer tenant by the landlord—Bengal Tenancy Act (VIII of 1885) as amended by Bengal Tenancy (Amendment) Act (Ben. IV of 1928), s. 26F.*

Before the Bengal Tenancy (Amendment) Act, 1928, came into operation on February 21, 1929, one Ali purchased a share in a certain holding. In October, 1938, one Majid purchased a portion of the said holding. Thereupon, Ali, purporting to be a co-sharer tenant in respect of the said holding, applied under s. 26F of the Bengal Tenancy Act, 1885, as amended by the Act of 1938, for transfer to himself of the portion of the said holding purchased by Majid. The application was opposed by Majid on the ground that Ali had not established his status of a co-sharer tenant inasmuch as Ali had not shown that he had been recognised by his landlord as a tenant. Upon Ali's contention that Majid, not being his landlord, could not question his status as a co-sharer tenant, and that, as against Majid, a purchaser of a portion of the said holding, he was entitled to claim pre-emption,

held that in order to be entitled to pre-emption under s. 26F of the Bengal Tenancy Act, 1885, as amended in 1938, Ali must establish that he was a co-sharer tenant in respect of the holding in question, by showing that, before he made his application under s. 26F of the Act, he had been recognised by his landlord as a tenant.

CIVIL RULE obtained by the objectors.

The facts of the case and arguments in the Rule appear fully from the judgment.

Upendra Kumar Roy for the petitioner.

Hemendra Kumar Das for the opposite party.

EDGLEY J. This Rule arises with reference to an application for pre-emption which was filed under

*Civil Revision, No. 1544 of 1939, against the order of Bhupendra Nath Mukherji, First Subordinate Judge of Tippera, dated Aug. 21, 1939, affirming the order of Bibhutosh Banerji, Additional Munsif of Nabinagar, Tippera, dated May 23, 1939.

1940
Abdul Majid
 v.
Altab Ali.
 Edgley J.

the provisions of s. 26F of the Bengal Tenancy Act, 1885, as amended by the Bengal Tenancy (Amendment) Act, 1938, by a man named Altab Ali, opposite party No. 1. His contention, according to his petition under s. 26F of the Bengal Tenancy Act, was to the effect that he was a co-sharer tenant in respect of a certain holding, a share of which he had purchased from a man named Naib Ali on December 7, 1928. He, therefore, made an application under s. 26F of the Act, on the ground that a portion of the holding in respect of which he was a co-sharer tenant, had been transferred to Abdul Majid and others in October, 1938. The application for pre-emption was contested by the petitioners in this Rule, on the ground that Altab Ali had no *locus standi* to make the application. The trial Court decided that Altab Ali was a co-sharer and, therefore, allowed his petition. Abdul Majid and his co-purchasers then appealed to the lower appellate Court, and the learned Subordinate Judge decided the matter on the footing that, even if Altab Ali had not been recognised as a tenant by his landlord, he was, nevertheless, entitled to the benefit of s. 26F of the Bengal Tenancy Act, because the purchasers of the portion of the holding which he sought to pre-empt had no right to question his title.

The main contention urged on behalf of the petitioners in this Rule, is that, although admittedly Altab Ali purchased his share of the holding before the Bengal Tenancy (Amendment) Act of 1928 came into operation, he was never recognised as a tenant, and he therefore had no *locus standi* to apply for pre-emption under s. 26F of the Act as amended in 1938. In my judgment, the view expressed by the learned Subordinate Judge with regard to the law on this matter is erroneous. It is true that it has been held in the case of *Behari Lal Ghose v. Sindhubala Dasi* (1) that in cases of transfer for value, the title unquestionably passes from the transferor to

the transferee, even though there is no recognition by the landlord; in other words, a transfer of this description cannot be impeached by the transferor, though the landlord may possibly refuse to recognise the transfer. At the same time, in connection with an application under s. 26F of the Bengal Tenancy Act, it is incumbent upon the applicant to show that he possesses the requisite status to enable him to file the application. It is, therefore, necessary for a person who files an application for pre-emption under this section to show that he is a co-sharer tenant of the holding. Although no one but his landlord may be in a position to dispute his right to retain the land which has been transferred to him, this does not mean that he has acquired the status of a tenant within the meaning of the Bengal Tenancy Act. Under s. 3(17) of the Act it is provided that a "tenant" means "a person who holds land under another person and is, or but for a special contract would be, liable to pay rent for that land to that person". A "landlord" in s. 3(6) of the Bengal Tenancy Act is defined in the following terms:—

"Landlord" means a person immediately under whom a tenant holds, and includes the Government.

It will, therefore, follow that, in the case of a transfer made before the Bengal Tenancy (Amendment) Act of 1928 came into operation, the transferee could only become a tenant if he had been recognised by the landlord. In my judgment, therefore, the learned Subordinate Judge has decided this matter from a wrong standpoint. In the view which he adopted he did not examine the question whether or not Altab Ali had, in fact, been recognised by the landlord, and consequently whether he had become a co-sharer tenant within the meaning of s. 26F of the Bengal Tenancy Act.

Having regard to the matters mentioned above, it is necessary that this case should be remanded to the trial Court for further consideration. The parties will be allowed to adduce such further evidence as they consider necessary for the purpose of

1940

Abdul Majid

v.

*Altab Ali.**Edgley J.*

1940
Abdul Majid
v.
Altab Ali.
Edgley J.

enabling the learned Munsif to decide whether Altab Ali is a co-sharer tenant within the meaning of s. 26F of the Bengal Tenancy Act and whether he had ever been recognised as a tenant by his landlord. The initial onus will, of course, lie upon Altab Ali, to establish his status as a co-sharer tenant on the date of the application, before he will be in a position to succeed in a proceeding of this sort.

If the parties wish to raise any question other than those mentioned above, it will be open to the learned Munsif to consider their applications to this effect on their merits.

Costs will abide the final result. The hearing fee in this Court is assessed at two gold mohurs.

Case remanded.

P. K. D.