

1880  
 KOONJERLAHI  
 DHUR  
 v.  
 PREMCHAND  
 DUTT.

given in each case, passes to the recipient, qualified by the capacity in each case, to take under gift or will, and it differs in the case of a wife from that of other takers. There is not, moreover, any emphatic declaration on the part of the husband to give the property absolutely to his wife. On the contrary, it seems to me that there is internal evidence of his intention that it should not be absolutely given. In the first place, because he gives her power to adopt a son, and if the property was absolutely given to the wife, very little remained to the son to enjoy. Secondly, because as to the moveable property given, he expressly restrains her from exercising absolute control over it. He says, that the money which was declared to be her share was not to be taken from the business in which it was invested, but she was merely to enjoy the interest or the profits of it. When he makes this direction or restriction in regard to moveable property, we may well assume that the enjoyment of the immoveable property was left her subject to the restrictions imposed by the ordinary rule of Hindu law. I think, therefore, that the Judge was wrong in holding that she became absolutely entitled to this property, and was competent to mortgage or alienate. The judgment of the lower Appellate Court, therefore, must be set aside, and that of the Subordinate Judge restored with costs.

*Appeal allowed.*

---

## ORIGINAL CIVIL.

---

*Before Mr. Justice Wilson.*

RUSSICKLOLL MUDDUCK v. LOKENATH KURMOKAR.

1880  
 Jan. 23.

*Landlord and Tenant—Contracts between Hindus in Calcutta—Buildings by Lessee—21 Geo. III, c. 70, s. 17—Contract Act (IX of 1872), s. 1.*

A tenancy created by express contract between Hindus in Calcutta, is within the words "matters of contract and dealing between party and party" in 21 Geo. III, c. 70, s. 17, and the right of the parties and the incidents of the tenancy must be governed by Hindu law.

The law laid down by *In re Thahoor Chunder Paramanish* (1),—viz., that a person building on the land of another is *prima facie* entitled to remove the buildings erected upon the land demised, or to receive compensation—when applied to a contract of tenancy, is not inconsistent with anything in the Contract Act, and therefore is unaffected by it.

1880  
 RUSSIGLOLL  
 MUDDUCK  
 v.  
 LORNAFF  
 KURMOKAR.

THIS was a suit by a tenant, who had been ejected from certain land in Calcutta, claiming to be allowed to pull down and remove buildings erected thereon by himself, or his predecessors in title, or in the alternative to be paid compensation for the outlay incurred. The plaint stated that the land had been let upwards of ninety years before the institution of the suit to one Mothoormohun Mudduck, the ancestor of the plaintiff, as a yearly tenant, in order that he might erect a dwelling-house thereon; that he entered upon the land, and at his own expense, and with the knowledge and consent of the lessor, erected some pucca buildings thereon, and occupied the same during his life. The plaint further stated that, after the death of Mothoormohun Mudduck, he was succeeded by his heir, one Poranchunder Mudduck, who erected other pucca buildings upon the land, and that, upon the death of Poranchunder Mudduck, the plaintiff and his two brothers (both of whom had since died) entered upon the land, and expended moneys in keeping the buildings in repair. In November 1878, the plaintiff was ejected, and he thereupon instituted the present suit, in which he contended that the buildings erected by his predecessors became the absolute property of the persons by whom they were erected, subject to the right of the owner for the time being of the land, on the determination of the tenancy, to elect to take over the buildings, on paying to the person entitled thereto the value of the materials of which they were constructed, or to allow the person entitled thereto to pull them down and remove the materials.

The defendant contended that the original lessee only had authority to erect kutchah huts on the land, and that the plaintiff was, therefore, not entitled, either to compensation for the value

(1) B. L. R., Sup. Vol., 596.

1880  
 BURSIOKLOTE,  
 MUDDUCK  
 v.  
 LOKNATH  
 KURMOKAR.

of the materials used in the construction of the pucon houses, or to pull them down and remove the materials.

Mr. Bonnerjee for the plaintiff.

Mr. Mitter for the defendant.

WILSON, J.—This is a suit by an ejected tenant of land in Calcutta against his landlord, in which he claims to be entitled to remove buildings alleged to have been erected on the premises in question by him, or his predecessors, or to be paid compensation in respect of them.

The case came on for settlement of issues on the 8th instant, and the issues were settled accordingly. The first issue is:—“By what law are the rights of the parties governed,”—i. e., by Hindu law or English.

If the case is governed by English law, then it was admitted that the plaintiff's claim fails; if by Hindu law, then there remain other issues to be tried. This question was argued by Mr. Bonnerjee for the plaintiff, and Mr. Mitter for the defendant, and I took time to consider my judgment.

It appears from the pleadings on both sides that the land in question is in Calcutta, and that the tenancy was one created by express contract. The parties concerned are, and throughout have been, Hindu. By what law are the incidents of such a tenancy governed?

The law generally to be applied by this Court within Calcutta is the common law of England, subject to exceptions, qualifications, and additions which it is unnecessary at present to notice. But by s. 17 of 21 Geo. III, c. 70, it is provided, that “inheritance and succession to lands, rents, and goods, and all matters of contract and dealing between party and party, shall be determined, in the case of Mahomedans, by the laws and usages of Mahomedans, and in the case of Gentoos, by the laws and usages of Gentoos.”

If this proviso applies to the case, then, subject to the other issues remaining to be tried, the plaintiff is *prima facie* entitled

to remove the buildings erected upon the land or to receive compensation: *In re Thakoor Chunder Paramanick* (1).

The decided cases bearing upon the matter are not numerous. In *Doyal Chand Laha v. Bhoyrubnath Khettry* (2), Phear J., granted an injunction, restraining the defendant, who had been in occupation of premises in Calcutta, from removing the materials of additional buildings which he said he had built; reserving leave to the defendant to bring a suit within two months to establish a special custom alleged by him, which would authorise his act. In that case, however, the report does not shew under what circumstances the defendant had been in occupation, whether as tenant, and if so to whom, or under some independent title. Unless he were tenant, and tenant to the plaintiff or of some one to whose right the plaintiff succeeded, the decision in that case does not bear upon the present. Nor does the report shew whether the learned Judge dealt with the case as one governed by English law or by Hindu law. If by the latter, then the decision seems to be overruled by the later Full Bench case of *In re Thakoor Chunder Paramanick* (1).

The last mentioned case decided that, according to Hindu law, buildings do not become the property of the owner of the soil on which they are erected, merely because they are erected; but that any one who has built on land which he occupies under any *bonâ fide* claim of title, is entitled to remove the materials or be paid for them. In *Parbutty Bewah v. Woomatara Dabee* (3) the question was, whether the tenant of land in Calcutta, on which he had erected tiled huts, was entitled to remove them. A custom to remove such erections was proved, and Macpherson, J., upheld the tenant's right to remove. But in that case it was not necessary to decide, nor does it decide anything, as to what the right of a tenant is, apart from evidence of custom.

These are the only cases with which I am acquainted bearing at all directly upon the question now raised for decision, and none of them appears to me to decide the question.

In the absence of express authority, I am of opinion that a tenancy created by contract is within the words "matters of

(1) B. L. R., Sup. Vol., 595. (2) Coryton, 117. (3) 14. B. L. R., 201

1880  
 RUSSICKLOLL  
 MUDDOOK  
 v.  
 LOKNATH  
 KUMHOKAR.

contract and dealing between party and party;" see the proviso of s. 17 of 21 Geo. III, c. 70.

The law as laid down in the Full Bench case referred to when applied to a contract of tenancy, is not inconsistent with anything in the Contract Act (IX of 1872), and therefore is unaffected by it, s. 1.

Upon the first issue, therefore, I find that the rights of the parties are governed by the Hindu law as laid down in the case just mentioned. The remaining issues will have to be tried.

Attorney for the plaintiff: Baboo Mohendronath Bonnerjee.

Attorneys for the defendant: Messrs. Ghose and Bose.

Before Mr. Justice Wilson.

1879  
 Dec. 1.

KALLY CHURN SHAW AND ANOTHER v. DUKHIE BIBEE  
 AND ANOTHER.

*Hindu Law—Custom—Marriage of Widow—Sagai\* Marriage—Limitation Act (XV of 1877), sched. ii, arts. 89, 90, 120, 144.*

A man, who is a member of the Hulwace caste, may contract a marriage in the *sagai* form with a widow, even if he has a wife living, provided, in the latter case, that he is a childless man.†

*Quære.*—Whether a married woman may not contract a *sagai* marriage, notwithstanding that her husband is living, if the panchayat has examined the case, and reported that her husband is unable to support her?

In the year 1857 *A* died, leaving a son, the plaintiff *B*, and the defendants *C* and *D*, his widows, him surviving. *C* took possession of all *A*'s property. The plaintiff *B* was the son of *D*, and shortly after *A*'s death, *D* gave birth to another son, the plaintiff *E*. In 1865, *D* instituted a suit against *C*, and *B* and *E*, alleging that *A* had left a will. In this suit, *C* claimed to be the heiress of *A*. No decree was made in the suit, which was compromised. In November 1877, *B* and *E* entered into possession of a shop, which had belonged to their father, and which had been managed, during their minority, by the defendant *C*. In 1879, the plaintiffs instituted the present suit, claiming to recover from *C* the property of *A* come to her hands.

\* See Dalton's Descriptive Ethnology of Bengal, p. 138.

† Cf. *Radaik Ghaserain v. Dudaik Pershad Singh*, Marsh., 644.