

1883
 MOHINI
 MOHUN DAS
 v.
 KRISHNO
 KISHORE
 DUTT.

enjoyment of that julkur would presumably belong to the owner of the estate, unless he had leased it out to tenants. It would follow that if the owner of the estate could show that he had enjoyed the julkur, this would be good evidence that the land under the julkur belonged to him, that is, in the absence of any suggestion, which has not been made in this case, that his enjoyment of the julkur was referable to a lease of an incorporeal right taken from a third party.

Before Mr. Justice Prinsep and Mr. Justice O'Kinealy.

1883
 February 19.

MUSYATULLA (DEFENDANT) v. NOORZAHAN (PLAINTIFF).

Landlord and Tenant—Ejectment—Right of Occupancy—Forfeiture—Beng. Act VIII of 1869, s. 52.

The mere omission to pay rent for five years does not of itself amount to forfeiture of a ryot's right of occupancy, and will not be sufficient to sustain an action by the landlord for the recovery of the ryot's holding.

A ryot having a right of occupancy cannot be legally ejected, unless under an order regularly obtained under s. 52 of the Rent Law, that is, under a decree for arrears of rent unsatisfied within fifteen days from the passing of the decree.

THIS was a suit for ejectment and khas possession. It was found as a fact that in 1882 (1875-76) the defendant had a right of occupancy in the lands in dispute; that he paid no rent for the years 1283, 1284, 1285, or 1286; and that a notice to quit had been served upon the defendant on the 28th of Pous 1286 (11th January 1880), requiring him to give up possession by the end of Cheyt 1286 (*i.e.*, before the 12th of April 1880). The Court of first instance gave the plaintiff a decree on the authority of *Hem Nath Dutt v. Ashgur Sirdar* (1), and this decree was affirmed on appeal. The defendant appealed to the High Court on the following grounds, amongst others:—

(1.) That under s. 22, Beng. Act VIII of 1869, the learned Judge below appears to have erred in holding that your petitioner's

* Appeal from Appellate Decree No. 661 of 1882, against the decree of F. Comley, Esq., Judge of Purnea, dated the 21st January 1882, affirming the decree of Baboo Lal Behary Dey, Munsiff of Kissingungo, dated the 19th September 1881.

right of occupancy was terminated by the notice to quit, alleged to have been served upon your petitioner.

1888

MUSYATULLA
v.
NOORZAHAN.

(2.) That the right of occupancy once acquired cannot be lost for the omission to pay rent for some years.

(3.) That the plaintiff having not brought his suit under s. 52, Beng. Act VIII of 1869, upon the ground of your petitioner's omission to pay rent, the lower Appellate Court was wrong in law in relying upon it for deciding the case in favour of the plaintiff.

Mr. *Twidale* for the appellant.

Baboo *Saligram Singh* for the respondent.

The judgment of the Court (PRINSEP and O'KINEALY, JJ.) was delivered by

PRINSEP, J.—The plaintiff sues to eject the defendant, stating that he has no occupancy rights, and that notice to quit has been regularly served on him.

It has been found by the lower Appellate Court that the defendant and his father have been actual cultivators for many years, and that the defendant in 1282 had acquired rights of occupancy; but the District Judge goes on to find that inasmuch as, on the defendant's own admission, he has paid no rent to any one for five years, he has lost those rights of occupancy, and consequently is liable to be dispossessed after notice.

It has been settled by the judgment of a Division Bench of this Court in the case of *Duli Chund v. Rajkissore* (1), and we agree in that judgment, that a ryot having a right of occupancy cannot be legally ejected unless under an order regularly obtained under s. 52 of the Rent Law, that is to say, under a decree for arrears of rent unsatisfied within fifteen days from the date on which it was delivered. The suit in its present form therefore is bad and must fail.

We think it necessary also to point out to the District Judge that even if a ryot who has acquired a right of occupancy fails to pay rent for five years, he does not necessarily forfeit that right unless it can be proved that he has abandoned the land,

(1) *Ante*, p. 88 : 11. C. L. R., 326.

1883 or a decree for ejectment, which would be operative under s. 52,
 MUSYATULLA has been passed against him.
 v. NOORZAHAN. The decrees of the lower Courts will be set aside, and the
 suit dismissed with costs in all the Courts.

Appeal dismissed.

Before Mr. Justice Prinsep and Mr. Justice O'Keefe.

1883
 March 2.

SHARAT CHUNDER GHOSE AND OTHERS (PLAINTIFFS) v. KARTIK
 CHUNDER MITTER AND ANOTHER (DEFENDANTS).*

Suit by minor—Infant—Minor—Compromise of Suit—Leave of Court.

Where a compromise of a suit is entered into on behalf of an infant defendant, the approval of the Court to such compromise must be express, and will not be inferred from the subsequent passing of a decree in terms of such compromise. Without such approval, the compromise will not bind the infant, and will be set aside at his instance.

Rajagopal Takhtaya Naiker v. Subramanya Ayyar (1), cited and followed.

THE facts of this case are as follows: Some time previously to the year 1860 one Raj Kristo Bose died, leaving him surviving one son, Khetter Nath Ghose, and one daughter, Modhumoti Dasse. Khetter Nath died in 1861, and was succeeded by his widow and heiress Showrobini, who died in 1875. The plaintiffs are the three sons of Modhumoti Dasse. On the 25th of November 1873 Showrobini executed a bond in favour of the defendant Kartik Chunder Mitter for Rs. 1,500, who, on the 10th of March 1877, filed a suit for the recovery of the amount of the bond and interest—in all, Rs. 2,388, against Modhumoti as guardian of the plaintiffs, who had succeeded to the estate of Khetter Nath on the death of Sowrobini in 1875. (Modhumoti, it should be mentioned, had been appointed guardian of the minors by the Judge of the District Court under the provisions of Act XL of 1858). On the 18th of March 1877, Modhumoti's pleader filed a deed of com-

* Appeal from Appellate Decree No. 869 of 1882 against the decree of T. Smith, Esq., Judge of East Burdwan, dated the 1st March 1882, reversing the decree of Baboo Bhupetty Roy, Subordinate Judge of that District, dated the 27th December 1880.