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They now moreover set up an adverse title in their written statement. They say, and they have endeavoured to establish throughout, that they have a lakeraj (rent-free) title to the property.

This point has been found against them; and it being also found that formerly their predecessors in title did pay rent to the plaintiff or to his predecessors in title, it seems to me that the plaintiff's case is completely made out.

I have already said that I think the Court below was wrong upon the point of non-joinder of plaintiffs, and I consider that the plaintiff is entitled to recover the property in question. There appears to be no claim made here for mesne profits.

The judgment of the lower Courts will therefore be reversed, and the plaintiff will have his costs in all the Courts.

In accordance with this decision the appeal No. 2142, which is a cross appeal by the defendants, will be decided in favor of the plaintiff.

That appeal will, therefore, be dismissed with costs.

*Appeal allowed.*

*Cross appeal dismissed.*

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*Before Mr. Justice Mitter and Mr. Justice Wilkinson.*

LAL BAHADOOR SINGH AND OTHERS (PLAINTIFFS) *v.* E. SOLANO AND ANOTHER (DEFENDANTS).*

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*Right of Occupancy, Acquisition of—Occupation by ryot as Malik—Rent Act (Beng. Act VIII of* 1869), s. 6.

It is only the holding of the father or other person from whom a ryot inherits that can be deemed to be the holding of the ryot within the meaning of s. 6 of the Rent Act. Occupation by the predecessor in title is not such an occupation as will create in the holder of land any right of occupancy. Nor can the period during which the occupant of land is in possession as malik be included in considering whether he has acquired a right of occupancy; such a right must be acquired against somebody, and cannot be acquired by a man against himself.

* Appeal from Appellate Decree No. 883 of 1882, against the decree of J. Tweedie, Esq., Judge of Shahabad, dated the 28th February 1882, affirming the decree of Baboo Ram Persad, Subordinate Judge of that district, dated the 27th December 1879.

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LAL BAHADOOR SINGH v. SOLANO.

Mr. *Evans*, Baboo *Mohesh Chunder Chowdhry*, and Munshi *Mahomed Yusuf* for the appellants.

Mr. *Twidale*, and Baboo *Chunder Madhub Ghose*, for the respondents.

THE facts of this case sufficiently appear from the judgment of the Court (MITTER and WILKINSON, JJ.) which was delivered by

MITTER, J.—This was a suit to recover possession of 113 beegahs 5 cottahs of land in mouzah Mozufferpore. It appears that mouzah Mozufferpore was the estate of Koer Singh. It was confiscated for his rebellion, and was sold by Government in the year 1861. At that sale the defendants' predecessor in title, Mr. R. Solano, became the purchaser. The estate then continued in the possession of Mr. Solano till the year 1878, when it was sold for arrears of Government revenue, and purchased by the present plaintiffs. This suit was commenced on the 23rd May 1879, and there is no dispute between the parties that the plaintiffs, after their auction-purchase, did not receive any rent on account of the land in suit from the defendants, who are the executors of the estate of Mr. Solano. The defence in the case was that, although the estate was sold for arrears of revenue, Mr. Solano had another interest in the land in suit, *viz.*, a gujashtadaree interest. In the second paragraph of the written statement the facts upon which this defence was raised are stated as follows: "That in 1222 Fusli (1814), the then proprietor of mouzah Mozufferpore settled with Mr. Dalton, indigo planter of the Nonour Factory, 221 beegahs 15 cottahs 14 dhoors of land then covered with jungle. Mr. Dalton cut down the jungle and brought the land under cultivation at his cost, and since that time Mr. Dalton and other owners of the Nonour Indigo Factory, one after another, continued to hold possession all along as ryots, and to pay the rent to the malik or proprietor and his representative. In 1264 Fusli (1856), Mr. A. Louis conveyed by sale the Nonour Indigo Factory, together with the disputed and other lands, to Mr. Cole, who again transferred the same by sale to Mr. R. Solano, since deceased, ancestor of the defendants. The old papers relating to the disputed land were destroyed during the mutiny by the rebels, along with other papers of the factory. Mr. R. Solano,

since deceased, ancestor of the defendant, purchased in 1861, mouzah Mozufferpore, wherein the disputed land lies, and, as shown above, he had before his purchase of the mouzah held an absolute gujashtadaree and occupancy right in the said land, which did not in any way become extinct or null and void after his purchase of the proprietary right and estate."

The lower Courts have dismissed the plaintiffs' suit. They have held that it was proved on the evidence that at least from the year 1263 (1855), the land in suit has been in the possession of Mr. Solano and his predecessors in title as ryots, and that the ryottee interest of Mr. Solano in the aforesaid 113 beegahs was kept up after he became the proprietor of the estate. Upon this finding of facts the lower Courts, being of opinion that the defendants are in possession of the land in suit as ryots holding a right of occupancy under s. 6 of the Rent Act, has dismissed the plaintiffs' suit. It is contended before us that, accepting this finding of facts as correct, the lower Courts are in error in holding that any right of occupancy under s. 6 of the Rent Act have been acquired by the defendants. This contention is based upon two grounds: 1*st*, that as before the purchase of the estate by Mr. Solano it is not found by the lower Courts that he himself had been in possession of the lands in suit from the year 1263, but what has been found is that he and his predecessors in title had been in possession of it under s. 6, the occupation by the predecessor in title is not such an occupation as would create in the holders of the land in suit any right of occupancy. The second contention is that, supposing Mr. Solano was entitled to tack on the possession of his predecessors in title to his own possession, yet the possession of Mr. Solano between 1861 and 1878 could not be added to it so as to create a right of occupancy, because during that time he was in possession of the whole estate as malik. We are of opinion that both these contentions are correct. It is quite clear that under s. 6 of the Rent Act it is only the holding of the father or other person from whom a ryot inherits that can be deemed to be the holding of the ryot within the meaning of the section. That being so, Mr. Solano could not rely upon the holding of his predecessors in title. Two cases have been cited before us in order to show that the contrary view

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has been taken of this section. We have examined these cases, and we do not think that there is any foundation for the contention—*Hurro Chunder Guho* v. *Dunne* (1); *Watson & Co.* v. *Shurut Soondaree Dabea* (2). Then as regards the question, whether Mr. Solano could rely upon his possession and holding as a ryot between the years 1861 and 1878, it seems to us that the decisions that have been cited before us are all one way. In an unreported case, *viz.*, Regular Appeal No. 152 of 1877, decided on the 25th Feburary 1879—*Kishen Persad Singh* v. *Rajah Radha Pershad Singh*, GARTH, C.J., with reference to the contention put forward in that case, *viz.*, that one of the parties was entitled to a right of occupancy as he had held the lands in suit in that case in the double capacity of a ryot and as proprietor, said: "But we think that this view is contrary both to the letter and the spirit of the Rent Law. A man cannot occupy the double character of landlord and ryot, or make a pretence of paying rent to himself for the purpose of acquiring an occupancy right against other people." It was held in that case that under the circumstances no right of occupancy could be acquired. The Chief Justice was of opinion that a ryotee holding would merge in the proprietary interest after the purchase of the latter. It is not necessary for us to express any opinion upon this question, *viz.*, whether a ryotee interest merges and becomes extinguished as soon as the ryot purchases the estate in which the ryotee holding is situated, but the learned Chief Justice held in that case, for the reasons given in his judgment, that the ryots could not acquire a right of occupancy under the circumstances set forth above. In the of *Savi* v. *Punchanun Roy* (3) it was held that, although a ryotee right would not merge, still it would remain in abeyance so long as the ryot would be in possession of the estate in another capacity. Mr. Justice Ainslie, who delivered the judgment in that case, was also one of the Judges in another case of *Mokoondy Lall Doobey* v. *Crowdy* (4). That case was decided by Mr. Justice Loch and Mr. Justice Ainslie. At first sight it would appear that that case was inconsistent with the decision of the learned Chief Justice

(1) 5 W. R., Act X Rul, 55.
(2) 7 W. R., 395.
(3) 25 W. R., 503.
(4) 17 W. R., 274.

referred to above, but the explanation that Mr. Justice Ainslie gave of his views upon the subject in the later case of *Savi* v. *Punchanun Roy* (1) goes to show that, so far as the actual decision of the subject is concerned, there is no inconsistency between the decision in *Mokoondy Lall Doobey* v. *Crowdy* (2), and the unreported case cited above. Both in the cases of *Mokoondy Lall Doobey* v. *Crowdy*, and *Savi* v. *Punchanun Roy*, the Judges held that though the ryotee interest did not merge, yet so long as the ryot remained in possession of the land in a double capacity, that is, as landlord and as ryot, he could not acquire a right of occupancy under s. 6, Beng. Act VIII of 1869. In this view we entirely concur. Section 6 says: "Every ryot who shall have cultivated or held land for a period of twelve years shall have a right of occupancy in the land so cultivated or held by him." This section, therefore, provides that cultivation or holding for a period of 12 years confers upon a ryot a right of occupancy, that is, a right to remain upon the land against the will of the landlord. This right of occupancy must, therefore, be acquired against somebody, and if a ryot is in possession of the land in a double capacity both as a ryot and as a malik, it is almost impossible to conceive how he can, under these circumstances, acquire a right of occupancy against himself. Therefore a reasonable view of the law is, that during the time a ryot remains in possession of the land in such double capacity the operation of the acquisition of the right of tenancy remains in abeyance. In this view of s. 6, Beng. Act VIII of 1869, it is quite clear that, taking the finding of the lower Court as correct, the defendants cannot be considered to have acquired a right of occupancy. The decisions of the lower Court, therefore, upon this point are not correct. But having regard to the defence raised, we think that this does not wholly dispose of the case. The defendants have relied upon their guzashta right, and under s. 37, Act XI of 1859, an auction-purchaser of a revenue-paying estate has no right to eject any ryot having a right of occupancy at a fixed rent, or at a rent assessable according to fixed rules under the laws in force. The right of occupancy mentioned here is not necessarily the right of occupancy under s. 6, Beng. Act VIII of 1869, and the defendants' claim as guzashtadar rests upon ground

(1) 25 W. R., 503. (2) 17 W. R., 274.

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quite independent of the right of occupancy under s. 6, Act VIII of 1869. But it appears that the lower Courts have not inquired into this matter. We, therefore, remand the case to the Court of first instance for retrial upon the following questions: (1) whether Mr. Solano at the time of his purchase in the year 1279 (1872), had any guzashtadari right, in the disputed land; (2), whether, if he had such guzashta right, it conferred upon him any right of occupancy; (3), whether that guzashta right was kept up during the years he was in possession of the estate as malik, *viz.*, between 1861 and 1878.

The parties will be allowed to adduce evidence upon all these three points, and with reference to the second issue now laid down the lower Court will allow evidence of custom to be given, if such evidence be tendered. Costs to abide the result.

*Appeal allowed and case remanded.*

*Before Sir Richard Garth, Knight, Chief Justice, and Mr. Justice Macpherson.*

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*July 3.*

RAKHAL CHURN MUNDUL (DEFENDANT) *v.* WATSON & Co. (PLAINTIFFS.)*

*Onus of proof—Obstruction to execution of decree by a claimant—Civil Procedure Code (Act VIII of 1859, s. 229)—(Acts X of 1877 and XIV of 1882,) s. 331—Settlement of julkur—Right in the soil.*

In a suit under s. 229 of Act VIII of 1859 (ss. 331 of Acts X of 1877 and XIV of 1882) the onus is on the plaintiff to establish a *primâ facie* case of possession, and it is then incumbent on the claimant to answer that case and show, if possible, a better title.

There is no such broad proposition of law, as that the settlement of a julkur implies no right in the soil.

THIS was a suit under s. 229 of Act VIII of 1859.

The land in dispute was situated in Mehal Bheel Bharat Gobindpur, and was a ryoti holding formerly owned by one Umakant Mozumdar and others, and had been sold by them to Messrs. Watson & Co., who after purchase sued Raja Pramatha Nath Roy, Zemindar of Dhulari, a contiguous mehal, for recovery of

* Appeal from Appellate Decree No. 634 of 1882 against the decree of A. J. R. Bainbridge, Esq., Judge of Moorshedabad, dated the 9th December 1881, affirming the decree of Baboo Robi Chunder Gangooly, Munsiff of Azimgunge, dated the 12th January 1881.