

*Before Sir John Edge, Kt., Chief Justice, Mr. Justice Tyrrell, Mr. Justice Knox,
Mr. Justice Blair, Mr. Justice Burkill, and Mr. Justice Aikman.*

1893
June 28.

MAHESH SINGH (DEFENDANT) *v.* GANESH DUBE AND ANOTHER
(PLAINTIFFS).*

*Act XII of 1881, ss. 7, 8, 9—Landlord and tenant—Occupancy tenant, power
of to sub-let—Perpetual lease by occupancy tenant.*

The effect of a perpetual lease made by an occupancy tenant of his occupancy holding to a person not a co-sharer in the right of occupancy considered.

THIS was a reference to the Full Bench made by Edge, C.J., and Aikman, J., as to the effect of the granting, by an occupancy tenant, of a perpetual lease of his occupancy holding. The essential facts of the case, with the exception that in this instance the lease purported to be perpetual, were similar to those in *Khiali Ram v. Nathu Lal* reported above at p. 219.

Munshi *Jwala Prasad* for the appellant.

Mr. *D. Banerji* for the respondents.

The judgment of the Court was delivered by EDGE, C.J.

The question referred to the Full Bench is as follows:—

“Is a lease in perpetuity of an occupancy holding granted by the occupancy tenant to whom the second and third paragraphs of s. 9 of Act No. XII apply, to a person who is not a co-sharer in the right of occupancy, valid as against the occupancy tenant?”

In the reference to the Full Bench in S. A. No. 948 of 1889, we have in our judgment delivered this day expressed our opinion that s. 9 of Act No. XII of 1881 does not prohibit a sub-letting by an occupancy tenant of his occupancy holding or of any part of it. The term for which the occupancy tenant may have sub-let is immaterial, as by sub-letting he does not and cannot transfer his right of occupancy. The sub-tenant by the sub-letting in perpetuity does not become a tenant of the zamindar, and his interest will not survive the determination of the occupancy right. Such sub-tenant cannot use the land for any purpose other than that for which the occupancy tenant, if in possession, would be entitled to use it. That is our answer to the question referred.

* Second Appeal No. 1163 of 1890 from a decree of Babu Mritunjoy Mukerji, Subordinate Judge of Benares, dated the 11th of September 1890, confirming a decree of the Munsif of Benares, dated the 30th January 1886.