

parties standing in these relations it is necessary to consider all these matters before any conclusion can be arrived at as to their rights to any particular compensation. We therefore think that the case should be returned to the District Judge in order that the parties may be given an opportunity of adducing evidence on these points so that the Court may deliver a proper decision having regard to all these circumstances. We make no order as to costs.

K. M. C.

*Case remanded.**Before Mr. Justice Prinsep and Mr. Justice Beverley.*

OBHOYA CHARAN BHOOLA AND ANOTHER (DEFENDANTS) v. KOILASH CHUNDER DEY (PLAINTIFF),

AND

OBHOYA CHARAN BHOOLA AND ANOTHER (DEFENDANTS) v. GOPINATH DEY AND OTHERS (PLAINTIFFS).*

1887
June 3.*Landlord and Tenant—Occupancy tenent—Non-payment of rent—Abandonment of tenancy.*

Mere non-payment of rent by an occupancy ryot does not extinguish or constitute an abandonment of the tenancy. *Hem Chandra Chowdhari v. Chand Akund* (1) distinguished; *Hemnath Dutt v. Ashgar Sindar* (2); *Golam Ali Mundul v. Golap Sundery Dasi* (3); *Manirullah v. Ramzan Ali* (4) explained.

KOILASH CHUNDER DEY brought a suit against his zemindar Obhoya Charan Bhoola and another for the recovery of his *jote* land, alleging wrongful dispossession of his occupancy tenure. The defendant admitted the *jote*, but added that, as the tenant did not pay any rent for a period of five years, he had taken possession of the land. A similar case was brought by Gopinath Dey against the same zemindar. The Munsiff, on the authority of *Hem Chandra Chowdhari v. Chand Akund* (1), dismissed the suits. On appeal the Subordinate Judge distinguished the case of *Hem Chandra Chowdhari* and reversed the Munsiff's judgment.

* Appeals from Appellate Decrees Nos. 2588 and 2589 of 1886, against the decrees of Baboo Ram Coomar Pal Chowdhry, Rai Bahadur, Subordinate Judge of Sylhet, dated the 22nd of September, 1886, reversing the decrees of Baboo Rojoni Nath Mitter, Munsiff of Habigunge, dated the 21st of May, 1886.

(1) I. L. R., 12 Calc., 115.

(3) I. L. R., 8 Calc., 612.

(2) I. L. R., 4 Calc., 894.

(4) I. C. L. R., 293.

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CHUNDER
DEY.

Obhoya Churn Bhoola appealed to the High Court.

Baboo *Trailuckyanath Mitter* for the appellant.

Baboo *Joy Gobind Shome* for the respondents.

The judgment of the Court (PRINSEP and BEVERLEY, JJ.) was as follows:—

In these two cases the tenants claiming rights of occupancy sue, within one year from the date of dispossession, to recover possession from their landlords and others to whom their landlords have let the land.

It has been found by the lower Court that the tenant in one case has not paid rent for three years previous to the date of dispossession, while the tenant in the other case has not paid rent for upwards of five years. It is therefore contended before us that the tenants are not entitled, as tenants having right of occupancy, to recover possession of the lands, because such rights continued only so long as they paid the rent payable for the lands, and that, inasmuch as they have ceased to pay such rent, their rights have gone. As an authority for this contention, four cases have been cited. It seems to us, however, that none of these cases goes so far as the argument of the learned pleader for the appellant. The cases, generally speaking, go to this extent, that, where there has been an abandonment of the tenure of a ryot having a right of occupancy by cessation in the payment of rent or otherwise, he cannot object to a re-occupation by the landlord as an ejectionment. In the first case quoted, *viz.*, that of *Hem-nath Dutt v. Ashgar Sindur* (1) it was held that, where the lands had been washed away by the action of water, and the ryot had ceased to assert any right thereto by payment of rent, he could not, when the lands re-appeared, claim to be regarded as a tenant still holding the rights that he previously had. In the next case, *Golam Ali Muntul v. Golap Suntery Dasi* (2) the tenant did not pay the rent to the landlord for about five years. The learned Judges held that he was not entitled to sue to recover possession, apparently because he had abandoned the tenure and had ceased to pay rent therefor simultaneously.

(1) I. L. R., 4 Calc., 894.

(2) I. L. R., 8 Calc., 612.

They say that "distinct abandonment and cessation to pay rent disentitle the tenant from enforcing the rights which he may formerly have enjoyed." In the case of *Manirullah v. Ramzan Ali* (1) the suit was dismissed because the tenant had abandoned his holding by allowing another person to occupy the lands and also to transfer his rights to a third party. It was accordingly held that this constituted an abandonment of the tenure on his part. In *Hem Chandra Chowdhari v. Chand Akund* (2) the suit was dismissed, because the plaintiff (tenant) had failed to prove his title as an occupant ryot. It was pointed out by the learned Judges that, inasmuch as the suit had been brought more than one year after the date of dispossession, he could claim to be restored only on proof of his title, and it was held on the facts that he had abandoned his holding by ceasing to occupy the lands, not only by non-payment of rent, but by being absent in jail during that period. These cases therefore are, in our opinion, distinguishable from the case now under consideration. The argument of the learned pleader for the appellant would, if conceded, enable a landlord, to whom arrears of rent were due, to re-occupy the lands for which this rent was payable, and so to eject the tenant without any recourse to the Courts. This would altogether nullify the effect of s. 22, Beng. Act VIII of 1869, which declares that no ryot having a right of occupancy shall be ejected otherwise than in execution of a decree or order under the provisions of the Act. If a tenant has abandoned the lands occupied by him, the landlord can of course re-enter, but that is not the case before us. It has been found that the plaintiff's tenants have held these lands as before up to a very short time of bringing these suits, when they were turned out by their landlord. The mere non-payment of rent under such circumstances would not amount to any forfeiture of the tenure, or in itself constitute any presumption of abandonment of any of their rights. It is rather for the landlord, if he seeks to eject occupancy tenants on such grounds, to sue them for the rents due and to obtain a decree in terms of s. 52. The appeals are accordingly dismissed with costs.

K. M. C.

Appeals dismissed.

(1) 1 C. L. R., 293.

(2) I. L. R., 12 Calc., 115.

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