

Before Mr. Justice Mitter and Mr. Justice Beverley.

JOGESSUR DAS AND OTHERS (PLAINTIFFS) *v.* AISANI KOYBURTO AND
ANOTHER (DEFENDANTS).^{*}

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April 22

Bengal Tenancy Act (VIII of 1835), ss. 20, 21—Suits pending at time Act came into force—Suit for ejectment—Acquisition of right of occupancy.

Section 21 of the Bengal Tenancy Act applies to suits pending at the time the Act came into force, *viz.*, 1st November, 1835, which had not then resulted in a decree. In a suit instituted on 8th October, 1835, to eject the defendants after notice to quit, it was held that, although the defendant had held the land from which it was sought to eject him for less than 12 years, and therefore would not, if the Bengal Rent Act VIII of 1869 had been applicable, have acquired a right of occupancy, yet the effect of ss. 20 and 21 of the Bengal Tenancy Act was to give him a right of occupancy, and therefore he could not be ejected.

THE litigation out of which this appeal arose was commenced by the plaintiffs who were the holders of a divided share of a certain village bringing two suits against the defendants, the tenants of separate portions of the plaintiffs' estate to eject them after giving them notice to quit. The defence (among others not now material) was that the defendants had acquired a right of occupancy in the land, and therefore were not liable to ejectment. The suits were heard together by consent. As to the defendant in one of the suits, Ramdyal, both the lower Courts found on the facts that he had held the land for more than twelve years; that he had acquired a right of occupancy in the land held by him, and, therefore, in any case that suit must be dismissed. As regards the defendants in the other suit it was found that two plots of the land had been held by them for less than twelve years, but that they had been holding as tenants other lands on the plaintiff's share of the estate for more than twelve years. As to these defendants, therefore, the question arose whether sub-section 2 of s. 21 of the Bengal Tenancy Act applied to them, so as to give them a right of occupancy in their entire holdings. That Act came into

* Appeal from Appellate Decree No. 2127 of 1886, against the decree of Baboo Nil Madhab Bandyopadhyaya, Subordinate Judge of Tipperah, dated the 22nd of July, 1886, affirming the decree of Baboo Monmotho Nath Mukerjee, Munsiff of Gouripore, dated the 22nd of March, 1886.

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force on the 1st November, 1885; the suits having been instituted on the 8th October, 1885. Both the lower Courts held that the sub-section 2 of s. 21 governed the cases as being cases pending when the Act came into force. The suits were therefore dismissed, and that decision was confirmed on appeal.

The plaintiffs appealed to the High Court.

Moulvi *Serajul Islam* for the appellants.

Baboo *Kulodu Kinker Roy* for the respondents.

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

This appeal relates to a part of the subject-matter of the original suit which was brought by the appellant as landlord to recover possession of certain plots of land which are in the possession of the defendant, as tenant under the plaintiff, on the ground that the tenancy has terminated by a notice to quit served upon the defendant, the tenant, some time after the 2nd of March, 1883. As regards the plots involved in this appeal the finding of the lower Appellate Court is that they have been in the possession of the defendant for less than 12 years, and that he is a "settled raiyat" within the meaning of those words in s. 20 of the Bengal Tenancy Act. The suit was brought on the 6th October, 1885, that is to say, before the new Tenancy Act came into operation. The lower Appellate Court has held that, under s. 21 of the Bengal Tenancy Act, the defendant-respondent before us has acquired a right of occupancy. This suit was a pending suit when the Bengal Tenancy Act came into force. The written statement of the defendant was filed after the 1st November, 1885, i.e., after the Act came into operation, and also the notice of the suit was served upon him after that date. It is clear that if s. 21 does not apply to this suit the lower Appellate Court is in error in holding that, as regards the plots involved in this appeal, the defendant has acquired a right of occupancy, because under Bengal Act VIII of 1869 the defendant was not entitled to rely upon his right of occupancy unless he had established that he had been in possession of the land in dispute in this appeal for 12 years. The lower Appellate Court thinks that s. 21 has a retrospective effect and applies to

all suits pending on the day on which the Act came into operation.

We think that the view taken by the lower Appellate Court is correct. We decide the question raised before us with reference to the express language of s. 21. It is true that on general principles an Act affecting the rights of parties would not apply to a suit commenced before the Act came into operation; but in this instance we find that the Legislature intended that s. 21 should apply to suits pending on the date on which the Bengal Tenancy Act came into force. The decision of this question therefore turns upon the language of sub-section 2 of s. 21 of the Tenancy Act. The sub-section is to the following effect: "Every person who, being a settled raiyat of a village within the meaning of the last foregoing section, held land as a raiyat in that village at any time between the 2nd day of March, 1883, and the commencement of this Act, shall be deemed to have acquired a right of occupancy in that land under the law then in force." It is clear from this part of the sub-section that the Legislature provided that a settled raiyat as defined in the Act should be deemed to have acquired a right of occupancy in the land occupied by him as a raiyat in the village of which he is a settled raiyat between the 2nd of March, 1883, and the commencement of the Act, that is to say, the 1st November, 1885, not under the new Act but under the Act then in force, that is to say, Bengal Act VIII of 1869. It is clear, therefore, that this part of the section was intended to modify the provisions of Bengal Act VIII of 1869 as regards the class of suits specified therein during the period mentioned above. Then follow words which, in our opinion, indicate that the provisions, already referred to were to apply to all suits instituted before the Act came into operation, and which had not resulted in a decree. These words are: "but nothing in this sub-section shall affect any decree or order passed by a Court before the commencement of this Act." That is to say, that the retrospective operation provided in the first part of the sub-section should have this exception only, *viz.*, that where a decree or order has been passed by a Court before the commencement of this Act relating to the rights of parties, such decree or order should

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not be affected by the provisions regarding the retrospective operation of the section. It follows, therefore, that if a suit commenced before the Act came into operation has not resulted in a decree, it would be governed by the provisions of the section. Therefore, although on general principles a change in the law affecting the rights of parties does not ordinarily govern pending suits, yet, in this particular instance, the Legislature having made a provision to the contrary we are bound to carry out the law.

The decision of the lower Court is therefore correct and this appeal must be dismissed with costs (1).

Appeal dismissed.

FULL BENCH REFERENCE.

Before Mr. Justice Mitter, Mr. Justice Prinsep, Mr. Justice Wilson, Mr. Justice Tottenham and Mr. Justice Norris.

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IN THE MATTER OF THE PETITION OF GIRIHAR NARAIN.
 TUSSUDUQ HOSAIN AND OTHERS v. GIRIHAR NARAIN AND OTHERS.*

Legal Practitioners Act (XVIII of 1879), s. 32, Construction of—Outsider practising as mukhtear, his liability to punishment—Mukhtears, their functions—Civil Procedure Code, s. 37.

Act XVIII of 1879 is an amending as well as a consolidating Act, and one of the respects in which it amended the old law was the conferring upon the High Court power "to make rules declaring what shall be deemed to be the functions, powers and duties of the mukhtears practising in the Subordinate Courts.

When a person other than a duly certificated and enrolled mukhtear, constantly, and as a means of livelihood, performs any of the functions or powers which the rule framed by the High Court in accordance with the provisions of the Legal Practitioners Act says are the functions and powers of a mukhtear, he practises as a mukhtear, and is liable to a penalty under s. 32 of the Act.

The words "any person" in s. 32 embrace pure outsiders as well as duly qualified and enrolled mukhtears who have failed to take out their certificates.

* Full Bench Reference in Rule No. 69 of 1886, on the hearing of a petition from an order passed by J. M. Kirkwood, Esq., District Judge of Patna, dated 6th of October, 1885.

(1) This case was followed in *Parbutty Churn Dass v. Komoruddin*, Appeal from Appellate Decree No. 2148 of 1886, decided by the same Judges (MITTER and BEVERLEY, JJ.) on 25th April, 1887.