

1918  
July, 1.

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Tudball.  
PARMANAND SINGH AND OTHERS (DEFENDANTS) v. MAHANT RAMANAND GIR  
(PLAINTIFF)\*

*Act (Local) No. 11 of 1901 (Agra Tenancy Act), sections 11 et seqq—Occupancy holding—Mahant—Mahant capable of acquiring occupancy rights for the benefit of the math which he represents.*

Held that the mahant of a math, just as much as any other tenant who holds for his own personal benefit, can acquire occupancy rights under the provisions of the Agra Tenancy Act, 1901, for the benefit of the math which he represents.

THIS was a suit for redemption of a mortgage made by a former mahant of a math. The plaintiff, as the present mahant, sued to redeem the property mortgaged, which belonged to the math and consisted of certain trees and rights of occupancy tenancy in certain plots of land. It was pleaded in defence that the plaintiff had no right to sue, as a math was not capable of acquiring or holding an occupancy tenancy. The court of first instance decreed the suit for the redemption of the mortgage of the occupancy tenancy and dismissed it as to the trees, and the lower appellate court confirmed the decree.

Mr. M. L. Agarwala (and Munshi Benode Behari), for the appellants:—

An idol could not acquire occupancy rights in a holding. The Act contemplated cultivation by the tenant himself. Under section 10 of the Agra Tenancy Act, in case of transfer of *sir* lands, they become subject of ex-proprietary tenancy. The idea was to provide means of subsistence for the tenant. A math could not acquire ex-proprietary rights. The Act did not contemplate the acquisition of such rights by the manager of a math. A "person" meant a living human being, and the section referred to a person who had "held" personally. This view was taken by the Board of Revenue in Select Decision No. 19 of 1912. Again the expression used in section 13 was 'he'. It could include 'she' but not an inanimate object. A tenant must be a person capable of occupying or cultivating the land.

Munshi Gobind Prasad, for the respondent, was not called upon.

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\*Second Appeal No. 57 of 1913 from a decree of Sri Lal, District Judge of Ghazipur, dated the 12th of September, 1912, confirming a decree of Aijaz Husain, Munsif of Rasra, dated the 31st of May, 1912.

RICHARDS, C. J. and TUDBALL, J.—This appeal arises out of a suit for redemption of a mortgage. Two grounds of appeal are mentioned in the memorandum of appeal, namely, that the plaintiff was not entitled to redeem the property and secondly that the suit was barred by limitation. We are unable to accept the argument in favour of this last ground of appeal. With regard to the first point, it is urged that nobody except a human being is capable of acquiring or holding an "occupancy" tenancy, and reliance is placed upon a ruling of the Board of Revenue, No. 19 of 1912, *Babu Hira Das v. Pandit Sheo Dat Tiwari*. It has to be admitted that property of all descriptions generally speaking, can be held by a *math*; but it is attempted to draw a distinction between an occupancy holding and other classes of property. In the present case the courts below have found that the property which it is sought to redeem formed portion of the *math* property and that it was held by the mortgagor as *mahant*. It was pleaded in the suit that the mortgagor had been deposed from his office as *mahant*, and that he was succeeded by Sheo Pujan Gir, who was in turn succeeded by the present plaintiff. The mortgagor was made party to the suit, but he has not appeared to defend the case. It must be admitted that it is not necessary that the owner of an occupancy holding should do the actual cultivation with his own hands. He is quite entitled to, and in many cases must, employ others to do the cultivation. It is quite clear that there is no express prohibition against the acquisition of an occupancy holding by the manager of a *math* on behalf of the *math*. We do not think that it is possible to infer such a prohibition from any suggestion of alleged policy in the Tenancy Act.

We, therefore, think that the decision of the court below was correct and ought to be affirmed. We dismiss the appeal with costs.

*Appeal dismissed.*

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