

1929.  
 MUSSAMMAT  
 BIBI  
 MAHBOOBAN  
 v.  
 SHEIKH  
 MURAMMAD  
 AMMER-  
 UD-DIN.  
 DAS, J.

be impossible for the Court to give the plaintiff a relief as against the properties belonging to defendant no. 1, especially before the plaintiff has established her claim to a definite sum of money. I must therefore allow the appeal on the question as to how much out of the sum of Rs. 40,000 is payable to the plaintiff immediately. The learned Subordinate Judge will consider the matter and give the plaintiff a decree for whatever sum he considers to be payable to the plaintiff on demand. Costs will abide the result and will be disposed of by the learned Subordinate Judge.

ADAMI, J.—I agree.

*Case remanded.*

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## APPELLATE CIVIL.

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*Before Ross and Chatterji, JJ.*

LACHMI NARAIN TEWARI

v.

RAMSARAN TEWARI.\*

*Bengal Tenancy Act, 1885 (Act VIII of 1885), section 22(2), whether applies to non-transferable occupancy holding—co-sharer landlord purchasing holding in execution of money decree—purchase, effect of—co-sharers, whether entitled to khas possession.*

Section 22(2), Bengal Tenancy Act, 1885, has no application to a non-transferable occupancy holding.

*Lakhi Kant Das v. Balabhadra Prasad*(1) and *Bipro Das Paul v. Surendra Nath Basu* (2), followed.

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\*First Appeal nos. 125 and 134 of 1926, from decisions of Babu Kamla Prasad, Subordinate Judge of Muzaffarpur, dated the 26th January, 1926, and the 27th March, 1926, respectively.

(1) (1914) 19 Cal. L. J. 400. (2) (1918) 43 Ind. Cas. 467.

Therefore, a purchase by a co-sharer landlord of a non-transferable occupancy holding in execution of a decree for rent, which operates only as a money decree, has no effect as against the other co-sharers who are entitled to joint possession to the extent of their shares.

*Midnapur Zamindari Co. v. Naresh Narayan Roy* (1), *Jagabandhu v. Rajmohan* (2), and *Golbar Bibi v. Aswini Kumar* (3), followed.

*Badlu Pathak v. Sibram Singh*(4), distinguished.

Appeal no. 125 of 1926 by the plaintiffs. Appeal no. 134 of 1926 by the respondents.

The facts of the case material to this report are stated in the judgment of Chatterji, J.

*S. Dayal*, for the appellants in appeal no. 125 and for the respondents in appeal no. 134.

*Manohar Lal* (with him *A. K. Mitra, G. P. Das* and *P. Misra*) for the respondents in appeal no. 125 and for the appellants in appeal no. 134.

CHATTERJI, J.—These two appeals arise out of a final decree passed in a suit for partition brought by the plaintiff against defendants 1 and 2, each of the parties owning one-third share. F. A. 125 is on behalf of the plaintiff while the other appeal is on behalf of the defendant no. 1.

The points raised on behalf of the plaintiff are (1) that the rate for the basgit land should have been assessed at a higher figure; (2) that certain raiyati lands purchased by one Kulan Singh should have been rated as bakasht on the ground, as alleged, that the purchase had been made by defendant no. 1 in his name and (3) that defendants 1 and 2 should not have been allotted almost the whole of the basgit lands and plot no. 518/1 said to have been a graveyard ought to have been divided on a different principle.

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(1) (1924) I. L. R. 51 Cal. 681, P. C.

(2) (1924) 78 Ind. Cas. 599.

(3) (1918-19) 33 Cal. W. N. 161.

(4) (1928) I. L. R. 7 Pat. 155 (161).

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RAMSARAN  
TEWARI.

18th Jan.,  
1929.

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LACHMI  
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TEWARI  
v.  
RAMSARAN  
TEWARI.  
CHATTERJI,  
J.

As to the appeal of the defendant no. 1, it is urged that some land settled by the plaintiff in mukarrari with Mosaheb Ali was directed by the Court to be valued as bakasht, but as a matter of fact this has been rated as raiyati land; the bakasht lands have been rated at Rs. 10 whereas this land has been rated at Rs. 4-3-0 per bigha: this is evidently a clerical mistake and ought to be corrected. This works a loss of Rs. 2-8-0 per year to the plaintiff. But it will not, in my opinion, be equitable to set aside the entire allotment because of this slight inaccuracy; justice will be done if money compensation be awarded to the defendant no. 1 in respect of this mistake. At twenty-years' purchase, I think that the plaintiff should pay money compensation of Rs. 50 to the defendant no. 1.

The next point raised on behalf of the defendant no. 1 is that certain plots purchased by him from a tenant in execution of a decree for rent should have been valued as raiyati land and not as bakasht. It is admitted that the purchase was made in execution of a co-sharer's decree for rent which operated as a money decree. It is also admitted that there is no custom of transferability and what was purchased was the jote or occupancy holding of a certain tenant Prasad Tewari. It is urged by the learned Counsel for the defendant no. 1 that under section 22(2) of the Bengal Tenancy Act he is entitled to hold the land subject to the payment of rent to his co-proprietors and as such it constitutes a raiyati holding and should have been rated as such. In my opinion this contention is without any substance. It is settled law that if a non-transferable holding be transferred the purchaser acquires no interest as against the landlords, that is, the entire body of landlords. If one of the co-sharer landlords purchases a non-transferable holding this is valid to the extent of his interest, but he cannot force the purchase on his co-proprietors. It has been laid down by their Lordships of the Privy

Council in the *Midnapur-Zamindary Co. v. Naresb Narayan Roy* (1) that no co-sharer can, as against his co-sharers, obtain any jote right in the lands held in common. The principle that when one co-sharer landlord takes a transfer of a non-transferable holding from a tenant he may be treated by the other co-sharer landlords as a trespasser is a principle well-settled. A reference may be made to the decision of the Calcutta High Court in *Jagabandhu v. Rajmohan* (2). As against the landlord purchasing a non-transferable holding his co-sharers are entitled to joint possession to the extent of their sharers [*Golbar Bibi v. Aswini Kumar* (3)].

Section 22(2) of the Bengal Tenancy Act, on which reliance is placed by the learned Counsel for the defendant no. 1, has no application to the case of a non-transferable holding. As laid down by Sir Lawrence Jenkins and Mookerjee J. in *Lakhi Kant Das v. Balabhadra Prosad* (4), sub-section (2) of section 22 of the Bengal Tenancy Act applies only to a case in which a transferable occupancy holding has been purchased. It is true that this case was decided on a purchase made before the amendment of the Bengal Tenancy Act in 1907; but so far as the question whether section 22(2) applies only to transferable or both to transferable and non-transferable holdings, the language of the section has not been altered by the amendment made in 1907. This view receives support from *Bipro Dass Paul v. Surendra Nath Basu* (5). I am satisfied that section 22(2) of the Bengal Tenancy Act applies only to a case in which a transferable occupancy holding is the subject matter of the purchase. In this view of the case, it is clear that the learned Subordinate Judge adopted the correct principle in valuing this non-transferable occupancy holding purchased by a co-sharer landlord.

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(1) (1924) I. L. R. 51 Cal. 681, P. C.

(3) (1918-19) 33 Cal. W. N. 161.

(2) (1924) 78 Ind. Cal. 599.

(4) (1914) 19 Cal. L. J. 400.

(5) (1918) 43 Ind. Cas. 476.

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CHATTERJI,  
J.

The learned Counsel in the course of his argument refers to the following observation in *Badlu Pathak v. Sibram Singh* (1): "A landlord holding a decree for rent can sell the property and purchase it himself. If he is a co-sharer proprietor, as in this case, he acquires the peculiar interest conferred by sub-section (2) of section 22 and may hold the land on paying to his co-proprietors their share of rent, and may transfer his rights so acquired to a third person who thereupon becomes a raiyat."

The matter there was as regards the right of a mortgagee as against the landlord. The question whether section 22(2) is limited to the case of a transferable holding did not arise for consideration. Then in this particular case the co-sharer landlord had made the purchase in execution of a decree obtained by him under section 148A. As such the question of transferability will not arise. Whether a tenancy is transferable or not, the landlords cannot ignore the auction purchaser in their own decree. The case of *Badlu Pathak* (1) is no authority for the general proposition contended for by Mr. Manohar Lal.

A point was raised by the learned Counsel for the defendant no. 1 that his purchase was recognised by the other landlords by acceptance of rent. It is also stated that defendant no. 2 was the predecessor-in-interest of the plaintiff and had recognised the purchase. An application is made in this Court for the reception of certain D Registers in evidence. It appears that this question of recognition was never raised in the lower Court and it will not be proper to accept any additional evidence on this point at this stage. The plaintiff had no opportunity of meeting the case that he was the purchaser from defendant no. 2. In the next place the receipt purporting to have been granted on behalf of the plaintiff has been denied on oath and I am not

(1) (1928) I. L. R. 7 Pat. 155, 161.

satisfied that it is a genuine document. The receipts purporting to have been granted by the defendant no. 2 look fresh and got up for the purpose of this case. I am not prepared to place any reliance on these receipts and the evidence of recognition is in my opinion far from conclusive.

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TRWARI.CHATTERJI,  
J.

In the result, Appeal no. 125 is dismissed with costs and Appeal no. 134 is decreed to this extent that defendant no. 1 will get a money compensation of rupees fifty from the plaintiff; there will be no order for costs in this appeal.

Ross, J.—I agree.

*Appeal no. 125 dismissed.*

S.A.K.

*Appeal no. 134 decreed in part.*

## APPELLATE CIVIL.

*Before Das and James, JJ.*

CAPTAIN MAHARAJ KUMAR GOPAL SARAN  
NARAYAN SINGH

v.

MAHESHWARI PRASAD SINGH.\*

1928-29.

Dec., 14.  
Jan., 18.

*Abwab—permanent tenure-holder, stipulation by, to pay definite and specific sum before passing of Tenancy Act—Bengal Tenancy Act, 1885 (Act VIII of 1885), section 74—“actual rent”, what is.*

Any definite and specific sum which a permanent tenure-holder agreed to pay by a formal kabuliyat executed on the creation of a permanent tenure before the passing of the Bengal Tenancy Act, 1885, is a part of the actual rent within the meaning of section 74 of the Act.

\*Appeal from Original Decree no. 79 of 1926, from a decision of Babu Shivanandan Prasad, Subordinate Judge of Gaya, dated the 3rd February, 1928.