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have here, might, perhaps, have been sufficient to raise the presumption of a permanent tenancy. But where, as in this case, we know when and under what circumstances the tenancy was created, evidence such as has been adduced is not sufficient for that purpose. Indeed, the circumstances attending the creation of the tenancy positively militate against any inference that it was intended to be permanent." These authorities appear to me to establish that upon the facts found, the Court below was justified in presuming that the tenure was of a permanent nature. I need not refer to the well-known case of *Ramsden* v. *Dyson* (1) and to the Privy Council case of *Beni Ram* v. *Kundan Lal* (2), which have been cited by the appellant, for we are not, in the present case, dealing with the point which was there decided.

In my opinion the appeal fails and must be dismissed with costs.

BANERJEE, J.—I am entirely of the same opinion.

Appeal dismissed.

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[744] *Before Sir Francis W. Maclean, K.C.I.E., Chief Justice and Mr. Justice Banerjee.*

PROMOTHO NATH MITTER AND ANOTHER (*Defendants*) *v.* KALI PRASANNA CHOWDHRY AND OTHERS (*Plaintiffs*).* [8th May, 1901.]

Putni interest—Merger of putni interest in zemindar, who purchases it—Regulation VIII of 1819, sale held under—Transfer of Property Act (IV of 1882), ss. 111, cl. (d), 117 and 2, cl. (d).

A *putni* interest created after the passing of the Transfer of Property Act is determined on a purchase of the same by the zemindar, even at a sale held in execution of a decree.

THIS appeal arose out of a suit brought by the plaintiffs for recovery of arrears as well as for apportionment of rent due to the zemindari interest purchased by them. The allegations of the plaintiffs were, that one Brindaban Chuckerbutty and his three brothers were the owners of certain shares in two *zemindaris*, who sold their shares to one Mohun Lal Mitter, the predecessor in interest of the defendants Nos. 1 and 2, and obtained from him four *pottahs* of intermediate tenures, *viz.*, *putni* and *miras ijaras* on the 1st June 1884; that these four intermediate tenures were subsequently sold for arrears of rent and were purchased by Adya Sundari, executrix to the estate of the said Mohun Lal Mitter; that on the 13th January 1896 they, the plaintiffs, purchased the said *zemindaris* at a sale held for arrears of Government revenue; that according to the terms of the *putni kabuliat*, the defendants Nos. 1 and 2 were liable to pay the Government revenue, and the cesses, which they did not pay from the Pous *Kist* of 1302 B. S.; and so, inasmuch as on the *kabuliats* there was, no apportionment of rent due on account of these *zemindaris*, the suit was brought. The defence *inter alia* was that the suit for rent was not maintainable in the form it was brought; that the prayer for a division of the *jamma* and for ascertainment of the proportion, in which the *jammas* were payable, was contrary to

* Appeal from Original Decree No. 58 of 1899, against the decree of Babu Chandra Kumar Roy, Subordinate Judge of Backergunge, dated the 22nd of December 1898.

(1) (1865) L. R. 1 E. & I. App. 129. (2) (1899) I. L. R. 21 All. 496.

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law; that the *putni* rights, the rents of which had been claimed, had [746] no separate existence, therefore the suit could not proceed; that the *putni* rights were purchased by them during the time they were the proprietors of the zemindaries, and, as such, the said rights were in fact merged in the zemindari, and therefore the plaintiffs could not get any rent from them. The Court of First Instance having overruled the objections of the defendants decreed the plaintiffs' suit. Against this decision the defendants Nos. 1 and 2 appealed to the High Court.

Dr. *Rash Behary Ghosh* (with him Babu *Atul Krishna Ghosh*), for the appellants.

Babu *Lal Mohan Das* (with him Babu *Bidhu Bhusan Ganguli*), for the respondents.

MACLEAN, C. J.—The facts to which it is necessary to refer for the purpose of our decision may be concisely stated as follows. The predecessors in title of the present appellants, on the 1st of June 1884, granted certain *putni* leases of certain properties, the details of which it is unnecessary to enter into; in 1888, they, in execution of a decree for arrears of rent due under the *putni* leases, purchased the *putni* leases, they being at that time the zemindars of the property. The *putni* rights by this purchase became vested in the zemindars. In May 1896, the present plaintiffs bought at a revenue sale the zemindari rights of the appellants in the lands which, with other lands, were included in the above *putnis*, and on the 30th of March 1898, the present suit was instituted to have an apportionment of the rent payable to them under the *putnis* in respect of their zemindari interest so purchased, for payment to them of the amount which might be found due upon such apportionment and for other and consequential relief.

The defence, in short, of the present appellants is, that the *putni* leases have determined, inasmuch as by the purchase by their predecessors in title of the *putni* leases in 1888, the leases merged in the reversion. They rely upon sub-section (*d*) of s. 111 of the Transfer of Propecty Act. That is substantially the only point that has been seriously argued before us; and if the appellants are successful upon that point, there is admittedly an end of the suit in their favour.

[746] The question then is, whether this case falls within the provisions of the section of the Transfer of Property Act, to which I have referred, which runs as follows: "A lease of immoveable property determines.....in case the interest of the lessee and the lessor in the whole property becomes vested at the same time in one person in the same right." This appears to me to be a section codifying the law upon a particular subject: in effect introducing the principles of the English law of merger, into the system of Indian law. It has not been contested, that, when the appellants predecessors bought up the *putni* leases in 1888, the interest of the lessees under those *putni* leases, and the interest of the lessor, the zemindar in the whole property, did become vested at the same time in the zemindar in the same right, *prima facie*, then, the case falls within the statute. But the plaintiffs take two objections to this view, and their contention is, that the case is not within the Act, because *putni* leases are leases "for agricultural purposes" and they rely on s. 117 of the Act which says that, "None of the provisions of this chapter apply to leases for agricultural purposes" and further they say that, inasmuch as the transfer in 1888 was one in execution of a decree, the Act does not apply, having regard to sub-section (*d*) of s. 2 of the Act, which says:

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"Nothing herein contained shall be deemed to affect.....any transfer by operation of law, or by, or in execution of a decree, or order of a Court of competent jurisdiction."

I will deal with these two objections in the order in which I have stated them. First, is a *putni* lease a lease for agricultural purposes? There is no authority for such a proposition, and so to hold, would, I think, come as a great surprise to the people of Bengal. A *putni* lease is generally granted to a middle man with a view to his sub-letting, which he generally does. It is not the *putnidar*, but his tenants who take the land for agricultural purposes, and, if we look at the particular *putni* leases in the present cases, it will be seen that the object of the leases was to enable the *putnidar* "to hold and enjoy according to our pleasure the properties covered by the *pottahs* with power to transfer the same by sale or gift, to make settlements, etc., thereof, by owning and holding the the same, levelling lands and filling up hollow places, [747] converting lands into *basti* lands (dwelling places), preparing gardens, and building *kutcha* and *pucca* houses, on payment of the full amount of rent on the day fixed for payment of each of the instalments year by year according to the *kistibundi* given below." It would be difficult to say that this was a lease for agricultural purposes.

Now I pass to the second objection. How does s. 111 "affect the transfer" under the execution of the decree in 1888? That section is a codified statement of the law as to the result to ensue upon the happening of a certain event, that is to say, the event of the interest of the lessee and the lessor in the whole property becoming united at the same time in the same person, in the same right. There is nothing in s. 111 which "affects"—a term which perhaps may mean validate or invalidate—the transfer: it only says what the result in point of law is to be on the happening of a certain event which may result either from transfer by act of parties, or by operation of law, or in execution of a decree. There is nothing in the section to indicate that the result in law there stated is only to ensue in the case of transfer by act of parties. We are virtually asked to introduce into the section after the word vested, "otherwise than by transfer by operation of law or in execution of a decree." It is difficult to appreciate why the legislature should desire to draw a distinction, *quâ* the law of merger, between the result of a transfer by act of parties and one by operation of law. Such a view would lead to strange anomalies, though, if the language of the statute be clear and explicit, we are bound to follow the language and not regard the anomalies it may produce. For instance, a zemindar grants a *putni* to his son; he dies intestate and his son as his heir succeeds him as zemindar; he is also *putnidar*; the transfer of the zemindari interest is by operation of law; according to the contention of the plaintiffs, there would be no merger, s. 111 being inapplicable. But if A, as zemindar, granted his son a *putni*, then granted him the zemindari interest, and died the next day, there would be a merger. The Legislature can scarcely have intended this. I do not think the language of s. 2 compels us to put a construction on the Act which would lead to such anomalous results, and that the true view is that s. 111 merely codifies the law as to the law of merger as between [748] landlord and tenant and does not "affect" the transfer itself. s. 2, sub-sec. (*d*) appears to me to mean that the various provisions in the Act regulating and codifying the law as to the actual transfers by act of parties shall not

affect transfer by operation of law, &c. The latter are to remain unaffected by those provisions. The *putni* leases then must be regarded as determined.

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It was also urged that the appellants subsequently to the purchase in 1888 had treated the *putnis* as existing and undetermined. But I doubt whether in the face of the explicit words of the statute, any act of the parties could prevent the conclusion of law which the section defines. We are not dealing with the extinguishment of a charge under s. 101. However, the evidence on this point is very slender and scarcely bears out the conclusion of the Court below.

On these grounds I think that the appeal must be allowed with costs and the suit dismissed with costs.

BANERJEE, J.—I am of the same opinion. I only wish to add a few words upon three of the points that have been raised in the argument before us, namely, *first*, whether clause (*d*) of s. 2 of the Transfer of Property Act prevents the application of clause (*d*) of s. 111 of that Act to this case by reason of the transfer by which the interest of the lessee, the *putnidar*, became vested in the lessor, having been a transfer by order of a Court, that is a sale held under Regulation VIII of 1819; *second*, whether the fact of the lease being a *putni* lease prevents the application of clause (*d*) of s. 111 of the Transfer of Property Act to this case; and *third*, whether the defendants, appellants, asserted their *putni* interest after their purchase of the *putni*, and whether, if they did so, that would prevent the operation of clause (*d*) of s. 111 of the Transfer of Property Act in this case.

Upon the first question the argument on behalf of the plaintiffs respondents was this: That as s. 2, clause, (*d*), of the Transfer of Property Act provides that nothing contained in the Act shall be deemed to affect any transfer by order of a Court of competent jurisdiction, and as the transfer, by which the interest of the lessee, that is the *putnidar*, became vested in the lessors, the appellants, was a transfer by a sale under Regulation VIII of 1819 [749] which was a transfer by an order of the Collector's Court, which was a Court of competent jurisdiction, the provision of clause (*d*) of s. 111, which is a provision contained in the Act, cannot affect the transfer so as to make the *putni* merge in the zemindari.

The argument is ingenious, but is it sound? As has been pointed out in the judgment of the learned Chief Justice, to give effect to an argument like this would lead to very anomalous results. For if clause (*d*) of s. 2 controls clause (*d*) of s. 111, a case in which the lessee's interest becomes vested in the lessor by inheritance would be a case to which the rule of merger cannot apply, for that would be a case of transfer by operation of law. But such a result could not have been intended. To apply clause (*d*) of s. 111 to the case may be to modify the after effects of the transfer. That cannot, in my opinion, be considered as effecting the transfer, that is, affecting either its validity or the mode of effecting it. The first question raised must, therefore, be answered against the respondents.

Then as to the second question. Two reasons were assigned in support of the contention that a *putni* lease is outside the scope of clause (*d*) of s. 111 of the Transfer of Property Act, one of these being that a *putni* lease is a lease for agricultural purposes within the meaning of s. 117 of that Act, and the other being that according to what for want of a better name may be called the common law of the country, it has been held that

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the doctrine of merger does not apply to a case where the interests of the *putnidar* and *zemindar* become united in the same person; and in support of the second branch of this contention the case of *Jibanti Nath Khan* v. *Gokool Chunder Chowdry* (1) was cited.

As to the first branch of the contention, I have nothing to say in addition to what has been said in the judgment of the learned Chief Justice.

As to the second branch of the contention, I would observe that there is nothing peculiar to a *putni* lease which would make clause (*d*) of s. 111 of the Transfer of Property Act inapplicable to it. And as for the case of *Jibanti Nath Khan* v. *Gokool Chunder Chowdry* (1) it is enough to say that that case was [750] decided without any reference to the Transfer of Property Act, and was a case to which the provisions of the Transfer of Property Act were inapplicable by reason of clause (*c*) of s. 2 of that Act, the *putni* lease in that case having been granted and the *putni* having been created before the Transfer of Property Act came into operation.

As to the third question raised, the evidence upon which the Court below has come to the conclusion that "for several years after the purchase the defendants asserted their *putni* interest and realised rent from the undertenants in that right," has been placed before us; and I do not think that that points conclusively to the defendants having by their acts and conduct kept up the *putni* interest. No doubt, in the plaints filed by them in their rent suits against their tenants, in receipts granted by them to their tenants, and in a lease granted by them to their lessee for a term of years, they make mention of the fact that their then subsisting interest accrued by reason of their purchase of the zemindari from the former proprietors and of the *putni* at an auction sale of the same, but these are statements that only show that they regarded themselves, not merely as zemindars with a *putni* standing between them and the raiyats, but as zemindars to whom the *putni* previously carved out of their zemindari had come back. These statements, therefore, do not, necessarily, go to show that they intended to keep up the *putni* as a subsisting tenure. And even if they had sought to do so, still, apart from any question of equitable estoppel that might arise in some cases, but was not raised in this case, that could not have prevented the operation of clause (*d*) of s. 111 of the Transfer of Property Act. Of course, there may arise a case in which, by reason of a zemindar, who has subsequently acquired the interest of a *putnidar* under him, having given out to the world that the *putni* was still a subsisting tenure, the conduct of third parties might have been influenced; and where that is shown to be the case, the zemindar might be estopped from denying the existence of the *putni*. No such case was here made or even suggested. That being so, the questions raised on behalf of the respondents must all be answered against them.

Appeal allowed.

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(1) (1891) I. L. R. 19 Cal. 760.