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31 C. 1014=8 C. W. N. 754.

The building, which it is proposed to erect, is certainly not one which on account of its size is unsuitable to the character of the holding. We can find no reasons therefore why the tenants-defendants should be in any way restrained from constructing the dwelling-house which they propose to erect, and we are unable to agree with the findings of the lower Appellate Court on this point. We are also unable to accept the view suggested by the learned Counsel's remarks that the tenant should not be allowed to execute any improvement in his holding without first obtaining the consent of the landlord by the payment of some sum of money. The tenant has a right to erect a suitable dwelling-house on his holding as an improvement thereto, and the improved dwelling-house which the defendants propose to erect is nothing more than a suitable dwelling-house within the meaning of section 76 of the Tenancy Act.

We accordingly set aside the judgment and decree of the lower Appellate Court and restore the order of the Munsif with costs. The result is that the suit of the plaintiffs will stand dismissed with costs in all the Courts.

Appeal allowed.

31 C. 1021 (=8 C. W. N. 860.)

[1021] APPELLATE CIVIL.

Before Mr. Justice Geidt and Mr. Justice Mookerjee.

RAM KUMAR BHATTACHARJEE *v.* RAM NEWAJ RAJGURU.*

[17th and 28th June, 1904.]

Chowkidari Chakran lands—Right of occupancy—Ejectment—Tenant-at-will—Act X of 1859, s. 6.

A right of occupancy may be acquired by a tenant even in *chowkidari chakran* lands under s. 6 of Act X of 1859.

Thakooranee Dossee v. *Bisheshur Mookerjee* (1), *Hyder Buksh* v. *Bhoopendro Deb Coomar* (2), *Hurry Ram* v. *Nursingh Lal* (3) and *Adhore Chunder Bahadoor* v. *Kisto Churn* (4) referred to.

[Foll. 13 C. L. J. 109=8 I. C. 828=15 C. W. N. 61. Ref. 2 C. L. J. 379; 46 I. C. 485=27 C. L. J. 556=22 C. W. N. 763.]

SECOND APPEAL by the plaintiff, Ram Kumar Bhattacharjee.

This was a suit for *khas* possession of some lands on a declaration of right thereto.

The plaintiff alleged that the disputed lands were formerly *chowkidari chakran* lands which were resumed by Government in January 1898, and settled with the Maharaja of Burdwan in November of that year. Subsequently one Satcowry Banerjee obtained from the Maharaja a permanent lease of those lands and held possession of the same. In June 1899, Satcowry sold his leasehold interest to the plaintiff under a registered deed of sale. In July 1900, the plaintiff brought this suit for *khas* possession of the disputed lands by ejecting the defendants, mainly on the grounds that the defendants had no right to the disputed lands, that they were not entitled to keep the plaintiff out of

* Appeal from Appellate Decree, No 1325 of 1902, against the decree of K. N. Roy, officiating District Judge of Bankura, dated April 3, 1902, confirming the decree of Sidheshwar Chakravarti, Munsif of Bankura, dated Feby. 22, 1901.

(1) (1865) B. L. R. Sup. 202; 3 W. R. (Act X) 29.
(2) (1871) 15 W. R. 231.
(3) (1893) I. L. R. 21 Cal. 129.
(4) (1877) 6 Leg. Comp. 15.

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possession, [1022] that their tenancy, if any, under the *chowkidars* was that of a tenant-at-will, and that such tenancy came to an end on the resumption of the lands by Government.

The defendants contended that they were holding possession of the disputed lands for a long time, as settled tenants, in succession to their ancestors; that they having thus acquired a right of occupancy in the lands in question could not be ejected from their *jote*; and that the suit was not maintainable without a notice to quit.

The Munsif held, that the defendants were in possession of the lands, as tenants, for many years under the *chowkidars*, and that they acquired a right of occupancy in those lands, and were not liable to be ejected therefrom; and he accordingly dismissed the suit.

On appeal, the learned District Judge affirmed the judgment of the first Court, and dismissed the appeal.

The plaintiff now appealed to the High Court mainly on the ground, that no right of occupancy could be acquired in *chowkidari chakran* lands.

Babu *Digambar Chatterjee* for the appellant. A *chowkidar* holds the *chakran* lands for performance of service, and his interest in the land terminates on its resumption. The tenant with whom he makes a settlement in respect of those lands can have no higher interest than that of a tenant-at-will. And regard being had to s. 181 of the Bengal Tenancy Act, a tenant under a *chowkidar* cannot acquire a right of occupancy in the *chakran* lands.

Mr. *B. C. Seal*, for the respondents. Section 181 of the Bengal Tenancy Act is protective in its operation and not destructive. The Tenancy Act lays down certain rules under which a sub-tenant cannot acquire a right of occupancy; the object of s. 181 is to exclude service-tenures from the operation of those rules; it does not destroy rights otherwise acquired. A tenant, who has already acquired a right of occupancy in *chowkidari chakran* lands is protected by s. 51 of Act VI (B. C.) of 1870, and such right is not destroyed by s. 181 of the Bengal Tenancy Act. A raiyat holding even under a trespasser acquires a right [1023] of occupancy; *Binad Lal Pakrashi* v. *Kalu Pramanik* (1), *Adhore Chunder Bahadur* v. *Kisto Churn* (2), *Golam Panja* v. *Hurish Chunder Ghose* (3).

Babu *Digambar Chatterjee*, in reply.

Cur. adv. vult.

GEIDT AND MOOKERJEE, JJ. On the 14th January 1898, some *chowkidari chakran* lands were resumed by the Government, and settled with the Maharaja of Burdwan. On the 26th November 1898, Satcowry Banerjee obtained a permanent lease of the lands from the Maharaja and, subsequently, on the 7th June 1899 conveyed his leasehold interest to the plaintiff. On the 17th July 1900 the plaintiff instituted the present suit to eject the defendants on the ground that their tenancy, if any, under the *chowkidars* gave them the position of a tenant-at-will, and that such tenancy had terminated on the resumption of the lands. The defendants pleaded that they had acquired rights of occupancy and were not liable to be ejected. The Court of first instance held that the defendants had been in occupation of the lands as cultivating tenants under the *chowkidars*, that the rent receipts from 1846—1898, which they had produced to prove their possession for many years, were genuine, and,

(1) (1893) I. L. R. 20 Cal. 708.
(2) (1877) 6 Leg. Comp. 15.
(3) (1872) 17 W. R. 552.

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that they must be treated as raiyats, who had acquired a right of occupancy and were not liable to be ejected. The learned Munsif accordingly dismissed the suit, and, upon appeal, his decree has been affirmed by the learned District Judge.

The plaintiff has appealed to this Court, and, on his behalf it has been contended, that a *chowkidar* holds his *chakran* lands for the performance of service, that his interest therein is inalienable beyond his term of office, that any tenant, whom he may settle on the land, can have no higher position than that of a tenant-at-will, and, that having regard to the language of section 181 of the Bengal Tenancy Act a tenant under a chowkidar cannot acquire the *status* of a raiyat so as to affect the incident of a [1024] service-tenure, that every holder thereof is entitled to take it in the condition in which it was created. The question raised before us, is not altogether free from difficulty, and, we think that there is considerable force in the contention that, as was pointed out by Mellish, L. J. in *Great Western Railway Co.* v. *Smith* (1), upon general principles, when a lessee creates an under-lease or any other legal interest, when the lease is forfeited, the under-lessee, as the person claiming under the lessee, loses his estate as well as the lessee himself. But we are of opinion that it is unnecessary for us to decide the true effect of section 181 of the Bengal Tenancy Act in the present case, which must be decided on other grounds. As found by the Courts below, the tenancy upon which the defendants rely, was created at least as far back as 1846, that is more than twelve years before Act X of 1859 was passed. Having regard therefore to the language of section 6 of Act X of 1859, which was held by the decision of the Full Court in the case of *Thakooranee Dossee* v. *Bisheshur Mookerjee* (2), to be retrospective in its operation, so as to confer a right of occupancy as soon as the Act came in force, upon tenants, who had cultivated or held lands as raiyats for twelve years, it follows that the defendants in the present case had acquired a right of occupancy in 1859. This conclusion is not affected even if we assume that the defendants were originally mere tenants-at-will, for, as pointed out by Mr. Justice Dwarkanath Mitter in *Hyder Buksh* v. *Bhoopendro Deb Coomar* (3) though they might have been originally tenants-at-will, they acquired a right of occupancy under the provisions of section 6, Act X of 1859, as they and their ancestors had held or cultivated the lands in dispute for a period of more than twelve years. Consequently, the right of occupancy acquired before 1859, would be maintained under the Act of 1859, as also under the provisions of section 6 of Act VIII of 1869 B.C., and would continue to exist under section 19 of the Bengal Tenancy Act; see also the case of *Hurry Ram* v. *Nursingh Lal* (4). We may add, that the view we take of the acquisition of occupancy rights in *chowkidari chakran* land [1025] under Act X of 1859, is supported by the decision of this Court in the case of *Adhore Chunder Bahadoor* v. *Kisto Churn* (5) (Sec. App. No. 2302 of 1875) decided by Markby and Prinsep, JJ. It follows, therefore, that the defendants are occupancy raiyats and not liable to be evicted as trespassers.

The appeal fails and must be dismissed with costs.

Appeal dismissed.

(1) (1875) L. R. 2 Ch. D. 235, 253.
(2) (1865) B. L. R. Sup. 202; 3 W. R. (Act X) 29.
(3) (1871) 15 W. R. 231.
(4) (1893) I. L. R. 21 Cal. 129.
(5) (1877) 6 Leg. Comp. 15.