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an under-raiyat was not heritable and that effect had been given to the plea by the Munsiff.

We are of opinion that the decision of the Subordinate Judge cannot be supported on the ground on which it is based, as he has erred in supposing [758] that the plea, that the interest of an under-raiyat was not heritable was not taken in the written statement.

31 C. 757=8 C. W. N. 479.

No question was raised in the pleadings whether by custom or local usage the right of an under-raiyat was heritable in the estate, in which the *jote* was situated. The point which was raised was one of law and the Subordinate Judge ought to have come to a decision on it.

The only question for determination, therefore, is whether the interest of an under-raiyat in his lease passes at his death to his heir or legal representative or not.

In Letters Patent Appeal No. 1393 of 1898 (*Keramulla Sheikh* v. *Afajan Bibi** decided on the 17th August 1894. Trevelyan and Ameer Ali, JJ. held that the right of an under-raiyat is not heritable. No reasons, however, are given for the conclusion.

Under the Bengal Tenancy Act an under-raiyat has the following rights. He cannot be ejected except on the expiry of the term of his written lease or if holding otherwise than under a written lease on a notice as indicated in section 49, clause (*b*) of the Bengal Tenancy Act and served in the manner prescribed by the Local Government. He cannot be ejected on the ground of forfeiture for denying his landlord's title, [*Dhora Kairi* v. *Ram Jewan Kairi* (1)]. Ordinarily he may have a lease for a term of nine years from his *raiyat* landlord under a registered instrument (Section 85). He may acquire a right of occupaacy, if such a custom or usage exists (Section 183, illustration 2.)

Tenancies for agricultural purposes are generally regulated by the agricultural year, so that the tenants may not spend labour on cultivation for the next season and may be enabled to reap the crops before the termination of the year. As regards, an under-raiyat, Section 49, Clause (*b*) expressly provides for ejectment at the end of an agricultural year, only on a notice to quit served at least a year before. There is no law in this [759] Province applicable to agricultural lands similar to that claimed in Clause (*i*) of Section 108 of the Transfer of Property Act. Section 156 of the Bengal Tenancy Act does not apply, unless there is a proceeding in Court and a decree for ejectment. If, therefore, a tenancy of an under-*raiyat* be held to terminate on his death, and if the death has taken place before the season for reaping the crops, his heirs may lose not only the land, but also the fruits of their ancestor's labour.

(1) (1890) I. L. R. 20 Cal. 101.

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31 C. 758 N. (=8 C. W. N. 481 Note.)

APPELLATE CIVIL.

Before Mr. Justice Trevelyan and Mr. Justice Amer Ali.

KERAMULA SHEIK *v.* AFAJAN BIBI.*

[Overruled 8 C. W. N. 479=31 Cal. 757.]

The right of an under-raiyat is not one, which can be inherited by his sons.

Trevelyan and Ameer Ali JJ "In this case the suit was brought for the purpose of ejecting the defendants from certain lands. The case made by the plaintiffs in the first instance was that their father Samsuddin had a *mourasi jotedari* right to these lands, that upon his death they have succeeded thereto, been in possession for some few months after his death, and had then been ejected by the action of the defendants. It has been

* Appeal under s. 15 of the Letters Patent, No. 38 of 1894, against the decision of the Hon'ble Mr. Justice Beverley, dated 14th May, 1894, in Appeal from Appellate Decree, No. 1393, of 1893 from the decree of Beni Madhub Mitter, Subordinate Judge of Faridpur, dated 27th March 1893 reversing the decree of Beni Madhab Roy, Second Munsiff of Goalundo, dated 29th February, 1892.

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Our attention has been drawn to *Karim* v. *Sunder Bewa* (1) as supporting the argument against heritability. That, however, is a case of a non-occupancy raiyat and with the greatest respect to the learned Judges, who decided it, we think it is open to criticism. Non-occupancy raiyats are classed with other raiyats in Section 4 of the Bengal Tenancy Act and Section 5, Sub-section (2) seems to include an heir of a *raiyat*.

Apart from any rights under the Bengal Tenancy Act, we are of opinion on other grounds, that the interest of an under-raiyat in his tenancy cannot be held to be determined at his death, but that it must pass to his heir or legal representative. There seems to us to be no reason why in this country, as in England, the interest of an under-raiyat in a lease for a term of years, should not be regarded as an asset belonging to his estate, and why it should not devolve at his death on his legal representative. An under-raiyat may hold his tenancy under a lease for a term of years or under a lease from year to year, and we can find no ground for distinguishing the one class from the other. The interest of an under-raiyat under a yearly lease is, therefore, in our opinion, equally an asset belonging to his estate, which with all the rights appertaining thereto, under the law, must be held to pass on his death to his legal representative.

As we are unable to agree with the decision in *Keramula Shiekh* v. *Afajan Bibi** we refer the following question for decision by a Full Bench, *viz.*:

Whether irrespective of custom or local usage the interest of an under-raiyat in a lease for a term of years or from year to year does or does not devolve on his death on his heir or legal representative.

[760] Babu *Debendra Nath Bagohi* and Babu *Kishori Lal Sircar*, for the appellant.

No one appeared for the respondent.

MACLEAN, C.J. In our opinion, irrespective of custom or local usage, the heir of an under-raiyat under an annual holding is entitled, on the death of the under-raiyat, to remain in possession of the land,

(1) (1896) I. L. R. 24 Cal. 207.

found as a fact that they have entirely failed to prove their *mourasi* right and that Samsuddin their father was an under-raiyat under the defendants. That being so it follows that the right that Samsuddin had is not one, which could be inherited by his sons and that in order to obtain a right to remain on the land the plaintiffs must show that they had acquired some interest in the tenure after the death of Samsuddin. The learned Judge Mr. Justice Beverly, who tried this appeal, says in his judgment, "but it seems to have been admitted at the trial that, after the death of their father, the plaintiffs had been in possession of the lands, and the case for the defendants was that they had relinquished them." We have had translated to us the portion of the written statement which refers to what has been called a relinquishment, and in our opinion according to that translation what has been said there is quite consistent with the case now made by the defendants, that the plaintiffs did not after Samsuddin's death acquire any fresh rights. The relinquishment may be equally the giving up of the land which their father held or giving up the right which their father held, although as a matter of fact the law did not allow of these rights devolving upon them. The question resolves into one whether the plaintiffs have omitted any under-raiyat's right after the death of their father. It is not suggested that they have omitted any other class of right. With regard to this the Subordinate Judge, whose decision on the facts is final, says "the plaintiffs have failed to prove that the defendants recognized them as their tenants by accepting rents from them." That we take to be a finding that there had been no acceptance of the plaintiffs as under-raiyats by the defendants and no such case as the creation of any new under-raiyati tenure has, so far as we can ascertain, been made by the plaintiffs, and it is certainly not the case on which they based their claim. That being so, we are of opinion that the facts as found by the learned Subordinate Judge conclude any interference with the decision to which he arrived. We therefore set aside Mr. Justice Beverley's decision and restore that of the Subordinate Judge. The Appellant is entitled to his costs of the appeal to this Court and of this Letters Patent Appeal."

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until the end of the agricultural year, for the purpose, if the land has been sub-let, of realizing the rent which might accrue during the year, or if not sublet, for the purpose of tending and gathering in the crops. In this case the suit was not brought until after the expiration of the then agricultural year. Although there was a claim for mesne profits, there is no evidence whatever to show that there were any, or that there were any crops which had been sown by the plaintiff's predecessor. The result, therefore, is that there is nothing which he can claim in this suit, and the suit must be dismissed.

The appellant is entitled to his costs in the two lower Courts, but to no costs of this Appeal.

PRINSEP, J. I am of the same opinion.

GHOSE, J. I agree.

HARINGTON, J. I agree.

BRETT, J. I agree.

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31 C. 761 (=8 C. W. N. 553.)

[761] INSOLVENCY JURISDICTION.

Before Mr. Jutsice Henderson.

IN THE MATTER OF WILLIAM WATSON AND ANOTHER.

[9th May, 1904.]

Insolvency—Adjudication—Indian Insolvent Act (11 *&* 12 *Vict. c.* 21), *s.* 7 *&* *s.* 11—*Bankruptcy Act of* 1883 (46 *&* 47 *Vict. c.* 15), *s.* 43 *&* *s.* 118—*Concurrent proceedings in Indian and English Courts—Receiving order in England—Adjudicating order—Official Assignee—Trustee in Bankruptcy.*

William Watson & Co. failed and on the 30th of January 1904, a receiving order was made on their application by the English Bankruptcy Court.

On the 1st of February at 11 A.M. they were on their own petition adjudged bankrupts in England and on the 16th of February a Trustee in Bankruptcy was appointed.

On the 1st of February at 11 A.M. the firm's constituted attorney applied before the Bombay High Court which made the usual vesting order.

The manager of the Calcutta office of the firm on the morning of the 1st of February closed the place of business in Calcutta, locking the doors and affixing thereto the following notice signed by himself:—"I regret to notify that under telegraphic instructions from my London office, Messrs. William Watson & Co. have suspended payment."

On the 2nd of February on the application of a friendly creditor, the firm were adjudged insolvents by the Calcutta High Court, which made the usual vesting order.

On the 13th of April the vesting order made by the Bombay High Court was discharged and the adjudicating order set aside.

Held, that an act of insolvency was committed in Calcutta, and that the High Court had jurisdiction to make the vesting order of the 2nd of February and that the Official Assignee of Bengal had rightly taken possession of the insolvent's effects in Bengal.

In re Hurruck Chund Golicha (1) and *Kustur Chand* v. *Dhunput Singh* (2) referred to.

That the English Trustee in Bankruptcy had no *locus standi* in this Court to make an application to have the adjudicating and vesting orders of the 2nd February set aside.

In the matter of J. Bell (3) distinguished.

[762] The Insolvency Courts in India have a discretion in making an adjudication order notwithstanding the existence of a prior adjudicating order in another country, provided the conditions of the Insolvency Act are

(1) (1880) I. L. R. 5 Cal. 605. (2) (1895) I. L. R. 23 Cal. 26.
(3) (1890) Unreported case, dated 4th June.