be held responsible to the plaintiffs for any larger sum than the said amount of Rs. 352-9-6 with interest thereon in the mode calculated by the Subordinate Judge.

There were two or three other matters mentioned to us in the course of the argument as bearing upon the principle on which the account was prepared by the Subordinate Judge, but, on consideration, we are of opinion, that, even if we are to give effect to some of the contentions raised by the learned vakil for the appellant, it would not make any substantial difference in the result. Upon these grounds, we think, that so far as the principle upon which the account has been prepared, no just exception can be taken. The result is that the decree of the Court below is affirmed, save and except the two matters to which we have already referred. The decree of the Court below will be modified accordingly.

Appeal dismissed; decree modified.

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

[757] FULL BENCH.

Before Sir Francis W. Maclean, K. C. I. E., Chief Justice, and Mr. Justice Prinsep, Mr. Justice Ghose, Mr. Justice Harington, and Mr. Justice Brett.

ARIP MANDAL *v.* RAM RATAN MANDAL.*

[21st March, 1904.]

Under-raiyat, heir of—Possession, right to remain in.

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, until the end of the then agricultural year, for the purpose, if the land has been sublet, of realising the rent, which might accrue during the year, or if not sublet, for the purpose of tending and gathering in the crops.

[**Ref.** 34 C. 516 F. B.=11 C. W. N. 626=5 C. L. J. 457=2 M. L. T. 219; **Expl.** 11 C. W. N. 519; 41 Cal. 1108 **Foll.** 27 C. L. J. 579; 24 C. W. N. 93; 19 C. W. N. 1129=29 I. C. 461; **Dist** 20 C. W. N. 756=31 I. C. 26.]

REFERENCE to the Full Bench by Brett and Mitra, JJ.

The Order of Reference was in the following terms :—

"The plaintiffs are the minor sons and heirs of one Rameswar Mundal, who held the land in dispute in this case as a *dur-jotedar* or under-raiyat under defendant No 2. Rameswar died in Falgun 1305 (February or March 1899), while in possession of the land. In *Chaitra* following (March or April 1899) defendant No. 1 took possession of the land by virtue of a settlement by defendant No. 2. The plaintiffs instituted the suit now in appeal for possession of the land by their mother and next friend on the 11th September 1900.

The defendants pleaded *inter alia* that Rameswar had relinquished the land before his death, that the suit was barred by limitation and that Rameswar had not an interest in the land heritable by law and the plaintiffs had therefore no title.

Both the Lower Courts have decided against the defendants the issues as to limitation and relinquishment of the land. The Munsiff, however, dismissed the suit holding that the right of an under-raiyat is not heritable.

The Subordinate Judge on appeal reversed the decision and decreed the suit, being of opinion that the defendants having failed in the issue as to the relinquishment by Rameswar, the plaintiffs were entitled to possession. He omitted to notice that the defendants had set up in the alternative the plea that the right of

* Reference to Full Bench in Appeal from Appellate Decree No. 1027 of 1902.

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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.