

Pending the attachment one Dhan Krishna preferred a claim, and that claim was allowed under section 246 of the Code of Civil Procedure. Bani Madhab, who after this sold his rights to the present plaintiff Chintamani, took no steps immediately to get rid of this order. But Iswar Chandra, the other mortgagee, did bring a suit within one year, and got the claim of Dhan Krishna set aside, and established the rights of the judgment-debtor. He then proceeded to have the property sold under his own decree, and he purchased it himself. Bani Madhab's vendee, Chintamani, now brings this suit in his turn against Iswar Chandra, to have it declared that the property may be sold in satisfaction of his earlier lien. This suit has been thrown out by the Courts below not on the ground that, as alleged by Iswar Chandra, the mortgage transaction between Bani Madhab and Ala Hafez was one of a fraudulent character, but on the ground that Bani Madhab by omitting to bring any suit within one year after the allowance of Dhan Krishna's objection, had lost his right of lien upon the property, and was effectually concluded by that order.

It does not seem to me that the terms of section 246 have the effect of completely barring any party against whom an award is given under that section, whatever circumstances may afterwards happen. I do not think that if this property had been attached by several creditors, and all those attachments had been removed in consequence of the claim of Dhan Krishna, it was necessary for each attaching creditor to bring a separate suit; but I think that when one of those creditors brought a suit against the objector, and in that suit set up the right of ownership of the original judgment-debtor, he effectually got rid of the claim of the objector, and left the road open for other parties having a lien upon the property. I think therefore that the present plaintiff, who represents the earlier mortgagee, is not debarred by his omission to bring a separate suit under section 246, but that he is quite competent to maintain his present contention against Iswar Chandra, and to enforce the lien which he had upon that property under the mortgage effected by Ala Hafez. I think therefore that the decision of the Court below must be set aside with costs.

MARKEY, J.—I am of the same opinion.

Before Mr. Justice Norman and Mr. Justice E. Jackson.

HARO DAS AND ANOTHER (PLAINTIFFS) v GOBIND BHUT-
TACHERJEE AND ANOTHER (DEFENDANTS). *

1869

Aug. 12

Act. X. of 1859, s. 6 Khodkast Ryot—Right of Occupancy—Abandonment.

The right of occupancy given in section 6, Act X. of 1859, is a right to occupy and hold the land. When a ryot leaves his home, he ceases to be a Khodkast ryot, and if he refuses to come back and cultivate the land when called upon, the zemindar is at liberty to settle the land with others.

* Special Appeal, No. 691 of 1869, from a decree of the Officiating Judge of Rungpore, dated 23rd December 1868, affirming a decree of the Deputy Collector of that district, dated the 5th September 1868.

1869

Baboo *Iswar Chandra Chuckerbutty* for appellant.

HARO DAS

Baboo *Girija Sankar Mazumdar* for respondent.

v.

G B INDBHUT-
TACHANJEE.

NOEMAN, J.—This is a suit for possession of a tenure consisting of rather more than 1 drone of land, of which the plaintiff alleges that he has a right of occupancy.

The facts are shortly these. In Aghran 1274, or in other words, November 1867, the plaintiff left his homestead in the defendant's village, and built a new house in a village belonging to another zemindar. On the 11th Pash the defendant, who was the zemindar, caused a letter to be sent to the plaintiff asking him why he had run away, saying that he did not know why plaintiff had run away, and giving him notice that he was required to be present within seven days in the zemindari cutchery to make some arrangement about the settlement of his jote. The plaintiff gave no answer whatever to this letter and in Magh the defendant granted a patta of the land to a new ryot considering that the plaintiff had abandoned his tenure.

The plaintiff brought his suit praying to be restored to possession, on the 6th August 1868. That suit was dismissed by the Deputy Collector, and his decision was affirmed by the Judge of Kungpore.

The plaintiff appeals specially to this Court.

We think that the decision of the lower Court is perfectly correct. The right of occupancy given by section 6 is simply what it professes to be a right to occupy and hold the land. If the ryot, of his own free will, quits and abandons the land, it appears to us that there is nothing in section 6 to prevent the zemindar from re-letting the land and getting the rent to which he is entitled from a new tenant.

The evidence of abandonment in the present case is quite satisfactory. In leaving the village of the defendant the plaintiff ceased to be a Khodkast ryot of his village. The zemindar had no security as to when he would come back, and the plaintiff when applied to refused to state whether he would come back or cultivate the land. After the expiration of a month from the date of his letter the zemindar granted a fresh patta to a new ryot to cultivate for the year 1275. He certainly could not be bound to keep the land vacant to suit the convenience of a ryot who had run away and who not only did not answer the defendant's letter but who down to August did not take any steps to assert his alleged title to hold the land.

That being so, the Judge was right in holding that the plaintiff had abandoned the land, and the suit was properly dismissed.

The appeal is also dismissed with costs.