

1874 preamble of Regulation VIII of 1819 and the enactments of that Regulation, in holding that it did not appear that the patni was a tenure upon which the right to sell for arrears of rent had been reserved by the contract of the parties.

BRINDABUN
CHUNDER
SIRCAR
CHOWDHRY
v.
BRINDABUN
CHUNDER DEY
CHOWDHRY.

Under these circumstances it appears to their Lordships that the decision of the High Court was not correct, and they will therefore humbly recommend Her Majesty to reverse that decision and to affirm the decision of the Principal Sudder Ameen, with the costs of this appeal.

Appeal allowed.

Agents for the appellants : Messrs. *Barrow* and *Barton*.

Agents for the respondents : Messrs. *Lawford* and *Waterhouse*.

APPELLATE CIVIL.

Before Mr. Justice Markby and Mr. Justice Birch.

NIDHIKRISHNA BOSE (PLAINTIFF) v. NISFARINI DASI AND
OTHERS (DEFENDANTS).*

1874
March 23.

Patni Talook—Sale for Arrears of Rent—Suit by Purchaser for Khas Possession of Tank on Estate purchased—Landlord and Tenant—Subordinate Tenure—Optimus Interpretes Rerum Usus—Beng. Act VIII of 1869.

The plaintiff, purchaser of a talook sold for arrears of rent under Regulation VIII of 1819, brought a suit for khas possession of a tank within the talook purchased by him, which had been held by the defendant and her predecessors from a time anterior to the grant of the talook. *Held*, that the relationship of landlord and tenant in which the parties stood did not prevent the application of the maxim *optimus interpretes rerum usus*, and it was open to the defendant to show by evidence as to the nature of the enjoyment what the origin of the tenure really was ; and it being shown that the interest in the tank had been frequently transferred during a period of more than sixty years without any change in the terms of the holding or the amount of rent paid ; and that one of the transferees of the tank had been the owner of the talook in which it was, it was held that the plaintiff was not entitled to a decree for khas possession.

THE plaintiff, the purchaser of a talook sold under the provisions of Regulation VIII of 1819 for arrears of rent, sued for

* Special Appeal, No. 1519 of 1873, against a decree of the Officiating Judge of Zilla East Burdwan, dated the 3rd April 1873, affirming a decree of the Sudder Munsif of that district, dated the 31st December 1872.

possession of a tank which the defendant Nistarini held by purchase of the interest of one Gholam Safdar. Gholam Safdar had purchased the tank in 1257 F. S. (1851) from the heirs of Gopinath Palit, who had himself purchased it in 1213 (1807) from one Krishna Mohun Hazra. The tank had been held from 1813 at least, if not from before the time of the permanent settlement, at an unvarying rent of Sa.,Rs. 2-8.

1874

 NIDHI-
 KRISHNA BOSE
 v.
 NISTARINI
 DAS.

The first Court was of opinion that the case was governed by Beng. Act VIII of 1869, that the plaintiff therefore could not eject the defendant from her holding of the tank, and accordingly dismissed his suit. The Judge on appeal upheld the decision of the Court below, but considered that Beng. Act VIII of 1869 was not applicable to the case. The plaintiff then preferred the present appeal to the High Court:

Baboos *Hem Chunder Banerjee* and *Bama Churn Banerjee* for the appellants.

Baboos *Kally Mohun Doss* and *Saroda Churn Mitter* for the respondents.

Baboo Hem Chunder Banerjee.—The plaintiff, by his purchase of the talook, has acquired all the rights of the zemindar, and he can defeat the defendants' occupation, however long that may have been, in the absence of any special contract between the parties, or any statutory protection of the defendants' rights. The defendants, having admitted that they were rent-paying tenants, could not, by any length of possession, acquire a title against their landlord, which was virtually the position occupied by the plaintiff. The cases of *Ramdhan Khan v. Haradhan Paramanick* (1) and *Addaito Charan Dey v. Peter Das* (2) were cited in the course of the arguments.

(1) 9 B. L. R., 107, note.

(2) Before Mr. Justice L. S. Jackson and Mr. Justice Glover. The 21st February 1872.

Landlord & Tenant—Permissive Occupancy—Tank—Ejectment—Act X of 1859, s. 6—Compensation for Improvement by Tenant.

ADDAITO CHARAN DEY (PLAINTIFF)
 v. PETER DAS (DEFENDANT).*

Baboo Hemchunder Banerjee for the appellants.

* Special Appeal No. 1205 of 1871, against a decree of the 1st Subordinate Judge of Zilla 24-Pergunnas, dated the 12th August 1871, reversing a decree of the Munsif of Chauki Alipore, dated the 29th July 1870.