

There is also a case in which it has been held that, if a ryot having a right of occupancy transfer his right to another, the right of occupancy is not thereby forfeited; and the zemindar cannot turn the grantee out of possession—*Gorachand Mustafi v. Madan Mohun Sikdar* (1). It is this last case which renders

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But it is said that the tenant-lessors in this case had absconded. Even supposing they had, that would not give the zemindar a right to take possession without the intervention of law. The mere fact of a man taking his house from one village and going to another, is no proof of his having absconded and given up the land, nor would such an act on his part entitle the zemindar to treat this land as if deserted, and allow him to enter into possession of it. But it is clear in this case that there was no such abandonment. In the month of Paus the lessors, after giving a lease to the plaintiffs in this case, left the village, and in the month of Falgun following, the zemindar ousted the plaintiffs, alleging that their lessors had absconded. If he thought that they had absconded and arrears of rent were due to him, he should have brought a suit for arrears of rent and so terminated the tenure of the lessors. But he has no right to enter into the land without the assistance of law.

The judgment quoted by the Judge, in the case of *Joy Kishen Mookerjee v. Raj Kishen Mookerjee* (a) is also not applicable to this case. On the whole we think that the judgment of the Court below must

be reversed, and a decree given to the special appellant with costs of all the Courts.

(1) Before Mr. Justice Loch and Mr. Justice Miller.

The 4th February 1869.

GORACHAND MUSTAFI (PLAINTIFF)  
v. MADAN MOHAN SIKDAR AND  
OTHERS (DEFENDANTS).\*

*Right of Occupancy—Transfer.*

Baboo *Khetternath Rose* for the appellant.

Baboo *Narakanath Dutt* for the respondents.

THE judgment of the Court was delivered by

MITTER, J.—Two points have been raised in this special appeal; first, that a mere right of occupancy not being transferable according to law, the defendant Madan is not entitled to retain possession of the land as against the plaintiff, who has been found by the lower Court to be the proprietor of the same; secondly, that there is no evidence to support the Judge's

(a) W. R., 147.

\* Special Appeal No. 1218 of 1868, against a decree of the Officiating Additional Judge of Zilla Jessore, dated the 15th February 1868, reversing a decree of the Munsif of Khoolya, dated the 23rd February 1867,

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the second of the above questions necessary. There is, it is true, no other decision upon this very point, but it appears to us that the two questions are so closely connected as to make it desirable that both should be considered together. The two questions referred are, therefore, those above stated.

Baboos *Srinath Doss* and *Mohini Mohun Roy* for the appellant.

Baboo *Gopal Lal Mitter* for the respondent.

Baboo *Srinath Doss*.—Under Beng. Act VIII of 1869, s. 6; a right of occupancy is a personal right of the tenant. To obtain the right there must be a continuous holding for twelve years: for this purpose the Act expressly recognizes the holding of the father as a holding of the son, but in every other case if the tenure be transferred, there are successive holdings, and not one continuous holding. In favor of this view are the cases of *Dinobundhoo Dey v. Ramdhone Roy* (1), *Rani Durga Sundari v. Brindaban Chandra Sirkar Chowdhry* (2), *Taraprasad Roy v.*

finding that the defendants Ashgar and Bussiruddin, the predecessors of the defendant Madan, were ryots having a right of occupancy.

With reference to the first point we are of opinion that it cannot be maintained. A right of occupancy may not be transferable by law, but there is no authority to show that the mere transfer of such a right works as a forfeiture of the rights and interests of occupant ryots themselves. Whether Madan has acquired any thing by the auction-sale in question or not, it is not necessary for us to decide, because the Judge's finding that Ashgar and Bussiruddin, who have been made defendants in this suit, are ryots having a right of occupancy, is a sufficient answer to the plaintiff's claim for *khas* possession. The plaintiff may or may not choose to recognize Ma-

dan as his tenant; but as long as Ashgar and Bussiruddin are alive, and as long as they have done nothing to forfeit their right of occupancy, the plaintiff cannot maintain a suit for *khas* possession.

The second point is also untenable. There was legal evidence of a very strong character, namely, the evidence given by the plaintiff's own witnesses, to show that Ashgar and Bussiruddin had acquired a right of occupancy in the land in question, and this Court is not competent to interfere with the Judge's finding based upon that evidence.

This appeal is accordingly rejected with costs.

(1) 9 W. R., 522.

(2) 2 B. L. R., App., 37;

*Surjokanto Acharjee Chowdhry (1), Hyder Buksh v. Bhubindro*

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(1) *Before Mr. Justice E. Jackson and Mr. Justice Mookerjee.*

*The 14th February 1871.*

TARAPRASAD ROY AND OTHERS  
(DEFENDANTS) *v.* SURJOKANTO  
ACHARJEE CHOWDHRY (PLAIN-  
TIF). \*

*Right of Occupancy— Transfer—Con-  
sent of Zemindar—Act X of 1859.  
s. 6.*

Baboo Chunder Madhub Ghose and  
Ramesh Chunder Mitter for the  
appellants.

Baboo Hem Chunder Banerjee and  
Srinath Doss for the respondent.

The following judgments were  
delivered :—

E. JACKSON, J.—THIS was a suit under cl. 6, s. 23, Act X of 1859. The plaintiff, alleging himself to be the owner of a tenure consisting of 69 bigas and odd katas in the zemindari of the defendants, stated that he had been illegally dispossessed from that tenure by the defendants on the 27th Chaitra 1274 (8th April 1863), and he therefore sought to recover possession. The defendants in their answer denied that the plaintiff had been dispossessed in Chaitra 1274, denied that he had been in possession for three years previous to that time and urged that consequently the law of limitation barred the suit; they urged also that the suit would not lie under Act X of 1859. And the plaintiff having alleged that he held a right of occupancy in this land

the defendants contended that no such right existed in him.

Both the lower Courts have found in favor of the plaintiff on the question of limitation; they have found that he was in possession. The lower Appellate Court, concurring in the decision of the first Court, has found that the plaintiff was dispossessed in Chaitra 1274; and on the question of the right of occupancy of the plaintiff, the Appellate Court seems to be of opinion that whether he held a right of occupancy or not, still the transfer of the jote to the present plaintiff was a legal transfer, and consequently the plaintiff was entitled to recover.

The first point taken before us in special appeal is that the lower Appellate Court has not properly decided the question of limitation. I certainly think that it would be better if the Appellate Court had given its own reasons for coming to the conclusion at which it has arrived. Looking back however to the facts found by the Deputy Collector, there seems to have been ample evidence to the effect that the plaintiff had been in possession and that he was dispossessed on the date alleged. The first Court goes very carefully into the evidence on the point, and considers that the dispossession did take place on the date alleged. There is also the fact that a few years before the alleged dispossession, there had been an Act IV decree passed in favor of the plaintiff, and that the plaintiff had actually sought to be put in possession, and orders had been passed to put him in possession. Coupling this fact with the

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\* Special Appeal, No. 1731 of 1870, against a decree of the Judge of Zilla Dacca, dated the 20th May 1870, affirming a decree of the Deputy Collector of Moonsheegunge, dated the 11th August 1869.