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NARENDRA
NARA YAN BOY
CHOWDHRY
v.
ISHAN CHAN-
DEA SEN.

determine his right of occupancy—*Kalee Kishoree Chatterjee v. Ram Churn Shah* (1), *Haran Chandra Pal v. Mukta Sundari Chowdhraim* (2), and *Jamir Gazi v. Goneye Mundul* (3).

(1) 9 W. R., 344.

(2) 1 B. L. R., A. C., 81.

(3) *Before Mr. Justice Lock and Mr. Justice Mitter.*

The 10th June 1869.

JAMIR GAZI AND ANOTHER (PLAIN-
TIFFS) v. GONEYE MUNDUL AND
OTHERS (DEFENDANTS),*

*Right of Occupancy—Lease—Abandon-
ment.*

Baboo Bhowani Churn Dutt for the
appellants.

Baboo Abhai Churn Bose for the
respondents.

THE judgment of the Court was
delivered by

LOCK, J.—We think the judgment
of the lower Court must be reversed.
The plaintiffs state that they obtained
a lease from Jakir Gazi and Bazi
Bewa, who are ryots having a right
of occupancy; that they have been
ousted by the defendants; and that
they now seek to recover possession
under the terms of their lease.

The Judge has reversed the order of
the first Court, apparently on the
ground that the lessors of the plain-
tiffs were not entitled to grant them
a lease; that such lease would be a
transfer of their rights; that it has
been held by a Full Bench of this
Court that a right of occupancy does
not make a jote transferable if other-

wise not so (a). He further held that as
the former ryots, lessors of the plain-
tiffs, had left the land, the defendants,
zemindars, were entitled to enter
upon it, as ruled by a Division Bench
of this Court in the case of *Joy Kishen
Mookerjee v. Raj Kishen Mookerjee* (b).

We think the Full Bench Ruling
quoted by the Judge is quite inappli-
cable to this case. That related to the
sale of a tenure in which the tenant
had merely acquired a right of occu-
pancy, and the Court then held that
a mere fact of occupation for twelve
years would not alter the nature of that
jote, and would not make transferable
what was not so in its origin. But it
is evident from the terms of s. 6, Act
X of 1859, and from the judgments of
this Court (one of which in the case of
*Kalee Kishore Chatterjee v. Ram
Churn Shah*, (c) has been quoted to
us by the respondent) that a tenant
having a right of occupancy can
create a lease, and that the lessee
from him is entitled to hold the land
under the terms of the lease. If
therefore the zemindar, who is entitled
to receive the rents of the land from
the ryots having a right of occu-
pancy, do eject their lessees, there can
be no doubt that such lessees have a
right to recover possession under the
terms of their lease, the zemindar
being entitled to nothing but the
amount of rent which the ryots who
hold from him immediately have
agreed to pay.

(a) *Ajoodhia Persad v. Emamlandee
Begum*, B. L. R., Sup. Vol., 725.

(b) 5 W. R., 147.

(c) 9 W. R., 344.

*Special Appeal, No. 2252 of 1868, against a decree of the Officiating Additional Judge of Zilla Jessore, dated the 23rd May 1868, reversing a decree of the Sudder Munsif of that district: dated 9th April 1867.

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,