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upon him ; he had, therefore, gained no right of occupancy himself, and there are many decisions of this Court that the possession of the transferee cannot be added to the possession of the transferor. The last of these decisions is *Hyder Buksh v. Bhubindro Deb Cowar* (1), and the only decision to the contrary, *Huro Chunder Goho v. Dunn* (2), must, I think, be considered to be over-ruled.

The questions to be decided are, therefore, reduced to these two :—(i) Whether the right of occupancy which Krishna Das had at the time of the sale to the defendant was transferred to the defendant ? And (ii) whether, if it was not so transferred

(1) *Before Mr. Justice Bayley and Mr. Justice Mitter.*
The 1st February 1872.

HYDERBUKSH AND ANOTHER (DEFENDANTS) v. BHUBINDRO DEB COWAR PLAINTIFF)*

Right of Occupancy—Transfer—Act X of 1859, s. 6.

Baboo *Debendro Narayan Bose* for the appellants.

Baboos *Doorga Mohan Doss* and *Bishen Doyal Roy* for the respondent.

THE judgment of the Court was delivered by

MITTER, J.—We are of opinion that this special appeal ought to be dismissed. In order to establish a right of occupancy, it was necessary for the defendants to prove that they had been in possession of the disputed land continuously for a period of 12 years. The Judge in the Court below has found that they had been in possession for 11 years and 3 months only. It has been argued that the defendants are entitled to add to their own possession the possession of one *Jesraj* from whom they purchased the land in question. But under the provisions of s. 6, Act X of 1859, it appears to

be clear that they are not entitled to do so. "The possession of a father or other ancestor from whom a ryot inherits may be added" in this manner ; but not the possession of a vendor. It is true that the zemindar consented to the transfer, but such consent cannot give to the defenants any right higher than that possessed by their vendor, and as it appears from the facts of this case that the vendor was a mere tenant-at-will, and as, under the provisions of the section referred to, the defendants are not entitled to add to their own possession the possession of their vendor, this ground of appeal must fail.

The other ground as to the extent of the jote of *Midni Bewa* does not appear to be made out. It is clear from the *jama-wasil-baki* papers of the time of the Court of Wards which have been put in by the plaintiff, as well as from other evidence, that *Midni Bewa* and *Kadir Baksh* held two distinct jotes, although the former had originally purchased from the latter an undivided half share of his jote.

We therefore dismiss this appeal with costs.

(2) 5 W. R., Act X Rul., 55.

* Special Appeal, No. 1252 of 1871, against a decree of the Judge of Zilla Rungpore, dated the 31st May 1871, reversing a decree of the subordinate Judge of that district, dated the 15 May 1869.

is it still existence in Krishna Das or his heirs, and being in existence, will it prevent the plaintiff from ejecting the defendant?

The first of these questions has been not unfrequently said to have been decided by a Full Bench in the case of *Ajoodhia Persadv. Emambandee Begum* (1); and if that had been the case, this reference would have been unnecessary. But this case decides a totally different point, as may be seen by considering the circumstances out of which it arose. The defendant held a non-transferable tenure, and he had held it for more than twelve years. He then attempted to transfer it, but the zemindar refused to recognize the transfer, and sued him for his rent. The argument for the defendant was that, because he had gained a right of occupancy, therefore that which was a non-transferable tenure had become a transferable one, and that, therefore, his liability ceased. The question was not referred because there were any conflicting decisions upon the point; but because of its importance, and as pointed out by the Full Bench, no cases had ever gone to this extent. No argument appears to me necessary to show that this decision has no bearing upon the subject now under consideration.

Of the other cases the following have been relied upon in favor of the transferability of the tenure: *Mussamut Taromonee Dossee v. Birressur Mozoomdar* (2), *Juggut Chunder Roy v. Ramnarain Bhuttacharjee* (3), and *Nunku Roy v. Mahabir Prasad* (4). The following have been relied on for the opposite view: *Dinabumdho Dey v. Ramdhone Roy* (5), *Rani Durga Sundari v. Brindaban Chandra Sirkar Chowdhry* (6), *Tarapersad Roy v. Soorjokanto Acharjee Chowdhry* (7), and *Hyder Buksh v. Bhubindro Deb Cowar* (8). It is not easy in all these cases to be quite sure of the grounds on which they proceed, but it is not, we think, possible to reconcile them all.

Besides these cases it may be convenient to refer to cases in which it has been held that the ryot by sub-letting his land does not

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(1) B. L. R., Sup. Vol., 725.

(2) I W. R., 86.

(3) *Id.*, 126.

(4) 3 B. L. R., App., 35.

(5) 9 W. R., 522.

(6) 2 B. L. R., App., 37.

(7) *Post*, p. 281.(8) *Ante*, p. 276.

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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.