

*Before Sir Barnes Peacock, Kt., Chief Justice, and Mr. Justice Mitter.*

HARAN CHANDRA PAL *v.* MUKTA SUNDARI CHOWDHRAIN.\*

1868  
July 6.

*Right of Occupancy—Sub-letting—Act X. of 1859, s. 6.*

See also  
13 B.L.R.,  
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A. sued for a declaration of right of occupancy founded on a potta and long possession, and alleged that he had under-let to ryots the land devised by the potta, but that B. had obtained a decree against them for rent. The lower Court, on appeal, held, that A. had determined his tenancy by quitting the land.

*Held*, that A. did not, by sub-letting, transfer the right of occupancy.

Decree reversed, and case remanded for trial on the merits.

PLAINTIFF sued for a declaration of right of occupancy of four *pahis* of land. He alleged that a potta had been granted to his father in 1247 (B. S.), corresponding with the Christian year 1860, by the defendants; that plaintiff's father, and after him plaintiff himself, held possession of these lands, which were sub-let to ryots, from whom they all along received rents; that the defendants, the zemindars, brought a suit against his (the plaintiff's) ryots, for arrears of rent, to which suit the plaintiff was added as a party, but it was decided in favor of defendants. The potta filed by the plaintiff was not a perpetual one; it simply authorized and permitted the tenant to occupy and dwell on the land devised. No term was specified.

Defendants, in their written statement, denied plaintiff's right and possession, and alleged that the potta set up by him was false.

The Moonsiff found that plaintiff had acquired a right of occupancy by reason of long possession; and that the suit for recovery of arrears of rent was instituted by defendants against plaintiff's ryots, with a view of destroying the rights of the plaintiff in the tenure. On these grounds, the Moonsiff gave a decree for the plaintiff.

On appeal, the Principal Sudder Ameen reversed the decision of the Moonsiff, and held that as the plaintiff's father had relinquished the land, and the rights of the plaintiff had been made over to a third party, and as a right of occupancy was not

\* Special Appeal, No. 3357 of 1867, from a decree of the Additional Principal Sudder Ameen of Dacca reversing a decree of a Moonsiff of that district.

1863 transferable, the plaintiff had reduced himself to the position  
 of a mere tenant-at-will, whose interests in the tenure had  
 determined.

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*Baboo Nalit Chandra Sen*, for appellant.—The fact of Sub-  
 letting the lands did not involve a forfeiture of the tenant's  
 right of occupancy created by long possession. [PEACOCK,  
 C. J.—Plaintiff cannot succeed in his suit for declaration  
 of right, as the potta on the strength of which he came into  
 Court, does not confer any permanent rights.] Though the  
 potta was the basis of plaintiff's claim, yet his prayer substan-  
 tially was for a declaration of rights which were interfered  
 with by the Act X. decision. The position of the plain-  
 tiff is not that of a tenant-at-will. Under section 6 of Act  
 X. of 1859, the holding of the father is the holding of the son.  
 It has been found as a fact that plaintiff's father, and after him,  
 plaintiff himself, were, and that the latter was still, in pos-  
 session of the tenure for a long time. The lower appellate  
 Court should have taken this fact into its consideration, and  
 given due effect to it.

*Baboo Anukul Chandra Mookerjee* (*Baboo Ashutosh Chatter-  
 jee* with him) for respondent—The plaintiff has based his  
 action on a potta, which does not confer any permanent rights.  
 His suit, as framed, must, therefore, be dismissed. The fact of  
 relinquishment by plaintiff's father destroyed all rights of  
 plaintiff in the tenure, and hence he cannot claim the right of  
 occupancy.

The judgment of the Court was delivered by

PEACOCK, C. J.—We think that the case must go back to  
 the Principal Sudder Ameen to try whether the plaintiff had  
 a right of occupancy. The substance of the plaint is that the  
 plaintiff, by reason of the potta, and of the holding under it  
 by his father and by himself, acquired a right of occupancy;  
 that he under-let the land, and that the plaintiff in the rent suit  
 recovered the rent from his (the present plaintiff's) ryots.  
 The issues which were laid down by the *Moonsiff* were:

*First*, Whether or not the disputed land of the share was held by plaintiff, as his ryoti right appertaining to the jummai land, as alleged by him, and whether the potta was genuine or not; and, *secondly*, whether or not the plaintiff's jummai right has been injured by the rent-decree.

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There is no doubt that if the plaintiff had a right of occupancy, and ryots holding under him have been compelled to pay rent to the defendant, the plaintiff's right has been injured by the rent-decree. The real question to be tried, therefore, is whether the potta, and the holding under it by the plaintiff and his father, or both of them, did create a right of occupancy in the plaintiff. Although the potta may not have amounted to a perpetual ryoti lease, a holding under it for 12 years, if proved, would create a right of occupancy.

The Principal Sudder Ameen who tried the case did not correctly understand the effect of a right of occupancy. He says, "that a right of occupancy is not transferable, and that the plaintiff's position was similar to that of a tenant-at-will, whose interest and tenancy-at-will are determined by his quitting the land." But the plaintiff did not transfer any right of occupancy, if he merely sub-let the land to ryots to hold under him. It is expressly provided by section 6 of Act X. of 1859, that the rule therein laid down does not as respects the actual cultivator apply to land sub-let for a term of years by a ryot having a right of occupancy. It, therefore, recognises the right of a ryot having a right of occupancy to sub-let the lands which he holds, although the ryot holding under him does not gain a right of occupancy as against him. If the plaintiff had a right of occupancy, his interest was not determined by under-letting the land or by putting any other person into possession of it as his ryot. In determining whether the plaintiff had a right of occupancy or not, the holding of his father must be taken into consideration by virtue of the last clause of section 6.

The decision of the lower appellate Court must be reversed with costs, and the case remanded to the Principal Sudder Ameen, to be re-tried upon the merits, having regard to the above remarks.