

In this view I would dismiss this appeal with costs.

HOBHOUSE, J.—I agree that this special appeal must be dismissed. The material facts are these:—The defendant applied under section 25, Act X. of 1859, to obtain assistance to eject the present plaintiff. The plaintiff, at the hearing of the application, set up certain pottas, and the defendants certain kabuliats. The Collector thought that the present defendants' kabuliats were established, and on the 14th September 1866 ordered that the present plaintiff should be ejected.

The present plaintiff, therefore, sued to recover possession, to have the kabuliat set aside, and the above pottas established. The Courts below have found the pottas in favor of the plaintiff, and have given him a decree.

The defendants appeal specially, urging that, under section 2, Act VIII. of 1859, the plaintiff's suit is barred. The question, therefore, is whether the order of the Collector, of date the 14th September 1866, was an order passed in a suit, and was an order passed by a Court of jurisdiction competent to determine the present plaintiff's rights under the pottas. The Full Bench ruling, quoted by Mr. Justice Bayley, seems to me conclusively to have held that (in the words of that decision) "an order passed by the Collector upon an application made under section 25, is not a judgment in a suit, or an order passed in the course of a suit and relating to the trial thereof," but is simply a ministerial order not affecting the rights of the parties, on which an appeal lies not to a Civil Court but to a ministerial officer, the Commissioner.

This being so, it is quite clear to me that the point in this case was not *res-judicata*, and the special appellant, therefore, has no ground for his appeal.

I concur, therefore, in dismissing with cost.

Before Mr. Justice Lock and Mr. Justice Hobhouse.

RANI DURGA SUNDARI (DEFENDANT) v. BRINDABAN CHANDRA
SIEKAR CHOWDHRY AND ANOTHER (PLAINTIFFS.)*

1869
Feb'y. 24.

Right of Occupancy—Transferable Tenure.

See also
13 B. L. R.
277.

A transfer of a mere right of occupancy gives no title to the transfer against the zemindar.

Baboos Ashutosh Dhur and Debendra Chandra Ghose for appellant.

Baboos Mahendra Lal Shome and Tarak Nath Sen for respondent.

* Special Appeal, No. 1789 of 1868, from a decree of the Officiating Additional Judge of Jessore, dated 16th April 1868, reversing a decree of the Sudder Ameen of that district, dated the 29th September 1866.

