

I therefore concur in the conclusion arrived at by my brother Ainslie on this question as well as on the other questions raised by the appeal (1).

1878
RAM DOOLARY
KOER
v.
THACCOOR ROY.

Appeal dismissed.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice McDonell.

HURROGOBIND RAHA AND OTHERS (PLAINTIFFS) v. RAMRUTNO DEY AND ANOTHER (DEFENDANTS).*

1878
June 28.

Chakeran Lands—Ejectment—Occupancy Rights.

A distinct refusal by a tenant to perform services incidental to his holding renders him liable to ejectment.

Semble.—No rights of occupancy accrue in lands held under a service tenure.

THIS was a suit for resumption and khas possession of certain lands, and for the removal of a house situated thereon. The plaintiff alleged that the ancestors of the defendants had held the said lands from the plaintiffs on the condition of performing certain specified services on the occasions of marriage, funerals, puja, parba, and other ceremonies in the plaintiffs' family. That the present suit was brought on the refusal of the defendants to continue the performance of these services. The defendants denied that the lands in dispute were held under a service tenure; and further alleged that, having been in possession of the lands for upwards of twelve years, they had acquired a right of occupancy. It was also asserted that the defendants paid rent to the plaintiffs for the said lands. The Court of first instance found that the defendants had rendered service to the plaintiffs and also paid rent; but held that as the plaintiffs had made no mention of the payment of rent in their plaint, but sued only on the allegation that the land was held on a service tenure, the suit must be

(1) See also *Narasayya Chetti v. Guruwappa Chetti*, I. L. R., 1 Mad. (which will probably be published next month).

* Special Appeal, No. 1279 of 1877, against the decree of Baboo G. Chowdry, First Subordinate Judge of Zilla Chittagong, dated the 24th of March 1877, affirming the decree of Baboo Nil Madhub Mookerjee Roy Bahadur, Munsif of Futtickchary, dated the 24th of June 1876.

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dismissed. The lower Appellate Court considered the fact proved that the defendants had rendered service to the plaintiffs; that it was unnecessary, however, to decide whether the defendants had held the land on a service tenure or by payment of rent, it being clear on the fact that the defendants had been in possession of the lands for twenty or twenty-five years, and had therefore, on the authority of *Jardine Skinner and Co. v. Ramnarain Beara* (1), acquired a right of occupancy. The Court, for these reasons, dismissed the appeal.

The plaintiffs, thereupon, preferred a special appeal to the High Court.

Baboo *Ahil Chunder Sen* for the appellants.

Baboo *Girja Sunker Mozoomdar* for the respondents.

The judgment of the Court was delivered by

GARTH, C. J.—The Judge in the lower Appellate Court appears to have made a mistake in this case. He seems to have supposed that whether the defendants held by payment of rent, or by performance of certain services, if they had held for a period of twenty or twenty-five years, the landlord could have no right to eject them.

If they had held the land by the performance of services, and they distinctly refused to perform those services, the consideration for their being allowed to continue in possession would wholly fail; and, under these circumstances, we see no reason why they should not be ejected.

It was clearly the duty of the lower Appellate Court, upon the issues which were framed in this case, and considering what the nature of the case was, to find, as a matter of fact, upon the evidence, whether the defendants held the land, as they say they did, by payment of rent, or as a service tenure. Instead of deciding the case upon that issue, the lower Appellate Court seems to have been satisfied to leave that question in a state of uncertainty.

(1) 2 Wym., Part ii, Rent Rul., 1.

We are very much disposed to think that if the defendants held by a service tenure they could not acquire a right of occupancy. However, it is not necessary to decide that point on this occasion.

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The Subordinate Judge has not done his duty in deciding the issues. The case must, therefore, go back to him for retrial. If he finds it necessary, for the proper determination of the question, to take further evidence, he will be at liberty to do so, the parties also being at liberty to adduce such further evidence as they may think fit. The costs must follow the result.

Case remanded.

Before Mr. Justice L. S. Jackson and Mr. Justice Tottenham.

KANGAL CHANDRA RUJ (DEFENDANT) v. KANYE LALL RUJ AND ANOTHER (PLAINTIFFS).*

1878
May 10.

Decree—Boundaries—Specific Statement of Relief granted by Decree.

A claimed certain lands, claiming one portion of such lands under one title, and the remainder under another and separate title. In the schedule to his plaint he gave the boundaries of the entire lands claimed by him, but did not give any boundary between the lands claimed by him under one title and the lands claimed by him under the other title. The lower Court decreed the whole of the plaintiff's claim. The lower Appellate Court confirmed so much of the decree of the Court of first instance as declared the plaintiff's right to the first portion of the land, and dismissed his suit as to the remainder; and there being no evidence to show what lands in particular out of the whole claim were comprised in the first portion for which it gave him a decree, directed them to be ascertained in execution. *Held*, that the decree was bad, as it should have specified the particular lands decreed.

THE plaintiff in this case sued to recover 5 bighas 16 cottas 6 chittacks and 3 dhurs of land, which, he said, had been wrongfully attached, sold in execution, and purchased by the first defendant.

* Appeal from Appellate Decree, No. 2547 of 1877, against the decree of S. H. C. Taylor, Esq., Judge of Zilla Beerbhoom, dated the 27th June 1877, modifying the decree of Baboo Poorno Chunder Shome, Sudder Munsif of that district, dated the 31st October 1876