

Before Mr. Justice Beverley and Mr. Justice Gordon.

SITANATH PANDA (PLAINTIFF) v. PELARAM TRIPATI AND OTHERS  
(DEFENDANTS.)<sup>\*</sup>

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June 6.

*Bengal Tenancy Act (VIII of 1835), section 22, clause 2—Transfer of occupancy right and purchase by some of several co-sharer landlords—Merger—Right of other co-sharer landlords to rent.*

The acquisition of an occupancy right by a proprietor does not, under sub-section (2) of section 22 of the Bengal Tenancy Act, affect the right of a co-sharer landlord to receive his share of the rent of the tenancy. The "third person" mentioned in that sub-section includes every person interested other than the transferor and transferee.

THE facts of this case are sufficiently stated in the judgment appealed from, which was as follows :—

"The plaintiff as *shebait* having a four annas share in the *debutter mehal* of an idol Kamesvar Jeo, sued the defendants 1 to 4 for arrears of rent for the years 1297 to 1299 in respect of a *jote*, originally held by Kanai Dolui and others, but purchased by defendants 1 to 3 in the name of defendant 4 in execution of a rent decree obtained against them by one of the plaintiff's co-sharers.

"The defendants 1 to 3 who are the plaintiff's co-sharers in the *debutter mehal* deny the alleged purchase, and deny the relationship of landlord and tenant between the plaintiff and themselves. Defendant 4 supports the plaintiff's case.

"The lower Court found the plaintiff's claim proved, and gave him a decree, and against this decree the defendants 1 to 3 appeal.

"It is urged in appeal that there is no evidence that these defendants are in possession of the *jote* as auction-purchasers ; and that, assuming the plaintiff's case to be true, the defendants being proprietors of the *mehal* like the plaintiff, the occupancy *jote*, even if purchased by them, must be supposed to be merged in the superior title, and the plaintiff's claim should have been dismissed.

"With reference to the first point, this Court has no reason to interfere with the lower Court's finding. It is satisfactorily

<sup>\*</sup> Appeal from Appellate Decree No. 1246 of 1893, against the decree of Babu Karunamoy Banerjee, Subordinate Judge of Midnapur, dated the 5th of July 1893, reversing the decree of Babu Apurbakrishna Sen, Munsif of Gurbetta, dated the 6th of September 1892.

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proved by the other co-sharers of the *mehal*, one of whom, Gobind Prosad, is a common relation of both plaintiff and defendants, that defendants 1 to 3 did purchase the *jote* at a sale for arrears of rent, and are in possession of it, and that defendant 4, a creature of those defendants, is their *benamidar*—a fact admitted by defendant 4 himself.

“As regards the second point, this Court observes that defendants 1 to 3 being proved to be in possession of the *jote* as ryots, the said *jote* must be presumed, in the absence of anything to the contrary, and as between the plaintiff and themselves, to be their occupancy holding under section 20, sub-section (7) of the Bengal Tenancy Act. Then, again, the defendants 1 to 3 being admittedly joint proprietors of the *mehal* with the plaintiff, the occupancy *jote* purchased by them must be supposed to have merged in their superior rights as proprietors under section 22, sub-section (2) of the Tenancy Act, and no rents can be claimed by the plaintiffs from them on account of it.

“The appeal is decreed, and the plaintiff’s suit is dismissed; but each party will bear his costs of both Courts under the circumstances of the case.”

The plaintiff appealed from this decision, mainly on the grounds that the Court had misapprehended the meaning of section 22, sub-section (2), of the Bengal Tenancy Act, and that as between the plaintiff and defendants 1 to 3 the Court should have held that, though there was a merger, that did not affect the plaintiff’s right to realize rent from the defendants.

Babu *Boidonath Dutt* for the appellant.

Babu *Nogendro Nath Mitter* for the respondents.

The judgment of the Court (BEVERLEY and GORDON, JJ.) was as follows :—

In this case the plaintiff sued for a four-anna share of the rent of a certain *jote* on the allegation that the *jote* in question had been purchased by the defendants 1 to 3 in the name of defendant No. 4. The defendants 1 to 3, who are co-sharers in the *mouza* with the plaintiff, deny the purchase of the *jote*. The defendant No. 4 in his written statement alleged that the defendants 2 and 3 had purchased the *jote*, *benami*, in his name, and that defendants 2 and 3 were in possession.

The first Court found that the defendants 1 and 2 had purchased the *jote* in the name of defendant No. 4, and were in possession of the *jote*, and decreed the suit against the defendants 1 to 4. This decree was reversed by the Subordinate Judge on the ground that under section 20, sub-section (7), of the Bengal Tenancy Act, the defendants must be presumed to be ryots with a right of occupancy, and therefore under section 22, sub-section (2), the right had merged in their superior right as proprietors, and that no rent could be claimed by the plaintiff therefor, and he accordingly allowed the appeal and dismissed the plaintiff's suit.

It is contended in second appeal that the lower Appellate Court is wrong in law in its interpretation of sections 20 and 22 of the Bengal Tenancy Act, and in reply to that the respondent has endeavoured to support the decree of the lower Appellate Court by showing that there is no legal evidence of the purchase of the *jote* by the defendants and of their possession in pursuance of it.

We think it is impossible to say that there is absolutely no evidence of the purchase, although in our opinion that evidence is extremely slight, and had we to decide the point upon the evidence, we might have come to a different conclusion, but there being some sort of evidence, the lower Courts were justified in finding as a fact that the defendants had purchased the *jote*, and we cannot interfere with that finding of fact.

Then as regards the other point raised by the appellant, it appears to us that, whether or not the *jote* was an occupancy holding, section 22, sub-section (2) of the Bengal Tenancy Act does not operate to prevent the landlord from recovering the rent of the holding. Sub-section (2) runs as follows: "If the occupancy right in land is transferred to a person jointly interested in the land as proprietor or permanent tenure-holder, it shall cease to exist; but nothing in this sub-section shall prejudicially affect the rights of any third person." That is to say, the occupancy right will cease to exist, but it does not follow that the tenancy will be altogether extinguished. The third person mentioned in the clause must be held to include every person interested other than the transferor and transferee. So that the acquisition of an occupancy right by a proprietor would not affect the right of a co-sharer landlord to receive his share of the rent of the tenancy.

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That being so, the decree of the lower Appellate Court must be reversed, and that of the first Court restored with costs in both the Appellate Courts. The finding of the Appellate Court being that the defendants 1 to 3 purchased the *jote* the decree will be against them, and the suit will be dismissed as against defendant No. 4.

*Appeal allowed.*

J. V. W.

*Before Mr. Justice Ghose and Mr. Justice Gordon.*

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June 26.

SHAM CHARAN MAL (PLAINTIFF) v. CHOWDHRY DEBYA SINGH  
PAHRAJ, MINOR, BY HIS GUARDIAN CHOWDHRY SHAM  
SUNDER ROY (DEFENDANT).<sup>\*</sup>

*Minor—Necessaries—Bond, registered, executed by minor—Registration of bond by minor—Limitation to suit against a minor on a registered bond executed by him for necessaries—Contract Act (IX of 1872), section 68—Registration Act (III of 1877), section 35.*

On the 20th April 1886 a sum of money was advanced by A. to a minor who executed a bond in respect thereof and duly registered the same. The money was required by the minor to provide for his defence in certain criminal proceedings then pending against him on a charge of dacoity and was used by him for that purpose. On the 18th June 1892, A. instituted a suit against the minor for the amount due on the bond. It was urged on behalf of the minor, who had not attained majority at the time the suit was filed, that he was not liable to A. for the amount advanced; that it was not advanced for "necessaries;" that he was not liable under the bond, and that the fact of it being registered could not help the plaintiff, and consequently, even assuming that the money was required for "necessaries," the suit was barred by limitation being brought more than three years after the advance was made.

*Held*, that the liberty of the minor being at stake, the money advanced must be taken to have been borrowed for necessaries within the meaning of section 68 of the Contract Act.

*Held*, further, that there being nothing to show that the minor *appeared* to be such to the Registrar at the time of registration so as to enable the Registrar to refuse registration under section 35 of the Registration Act, and the concealment of the fact of the executant's minority both by himself and by the plaintiff from the Registrar not amounting to fraud so as

<sup>\*</sup> Appeal from Appellate Decree No. 757 of 1893, against the decree of B. L. Gupta, Esq., District Judge of Cuttack, dated the 1st of February 1893, reversing the decree of Babu Bolloram Mullick, Subordinate Judge of that district, dated the 22nd of August 1892.