Chapter 95 of the Code of Criminal Procedure, and that this Court is precluded, by the terms of sections 537, from interfering with the orders of the Sessions Judge.

The rule is therefore discharged.

Rule discharged.

J. V. W.

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DAMU SENAPATI *v.* SRIDHAR RAJWAR.

APPELLATE CIVIL.

Before Mr. Justice Macpherson and Mr. Justice Banerjee.

HURRY RAM AND ANOTHER (DEFENDANTS) *v.* NURSINGH LAL AND OTHERS (PLAINTIFFS).*

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Bengal Tenancy Act (*VIII of* 1885), *s.* 19—*Ryot, definition of—Right of occupancy—Occupancy for horticultural purposes—Statutory right, effect on, of repeal of Act which gives it.*

Where a right of occupancy had been acquired under the old Tenancy Act (VIII of 1869) which is repealed by the Bengal Tenancy Act (VIII of 1885), *Held*, that apart from the provisions of s. 19 of the latter Act, such right of occupancy was not forfeited by the repeal, there being nothing in the new enactment to deprive any person of a statutory right which had been actually acquired.

Semble.—The definition of "ryot" in the Bengal Tenancy Act (VIII of 1885) is not exhaustive, and there is nothing in that definition which would exclude a person who had taken land for horticultural purposes.

THE facts of this case were as follows :—

The plaintiffs and their ancestors were the tenure-holders of 3 bighas 10 cottahs of land in mouzah Madubun, pergunnah Arrah, and had been in possession for upwards of fifty years. The land had always been used for horticultural purposes. On the 11th of June 1884 the plaintiffs leased the land on *shikmi* tenure to two under-tenants, and they held it under the plaintiffs till 1889. The defendants Nos. 2 and 3, the proprietors of the mouzah, endeavoured to enhance the rent, but without success. Eventually they got up a collusive pottah in the name of defendant No. 1, who instituted criminal proceedings against the plaintiffs'

* Appeal from Appellate Decree No. 1039 of 1891, against the decree of Babu Aubinash Chandra Mittra, Subordinate Judge of Shahabad, dated the 9th of April 1891, affirming the decree of Moulvie Ameer Ali, Munsiff of Arrah, dated the 30th of June 1890.

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HURRY RAM v. NURSINGH LAL.

two under-tenants, the *shikmi* holders. The Criminal Court, holding that the case involved a question of right, made an order placing the crops for the year 1889 in the hands of a third party, on whose application the crops were made over to the defendant No. 1, and he with the aid of the proprietor of the village took possession of the said land during the agricultural season of 1889. On the 27th of August 1889 the plaintiffs filed a suit to be reinstated and for mesne profits. Both the Lower Courts passed a decree in favour of the plaintiffs, and from the decision of the Lower Appellate Court the defendants appealed to the High Court.

Mr. *M. L. Sandel* for the appellants.

Babu *Saligram Sing* for the respondents.

Mr. *M. L. Sandel* :—The main points in this case which have been wrongly considered by the Courts below are—1st, there is nothing in the Bengal Tenancy Act (VIII of 1885) by which a person who holds lands for any purpose other than that of cultivation can acquire in it a right of occupancy; 2nd, the plaintiffs are not ryots as defined in that Act; 3rd, that as the plaintiffs are not ryots as defined by the Act, therefore section 19, which secures a right of occupancy acquired by a ryot before the commencement of the present Act, has no application to them. For these reasons the judgment of the Lower Court should be reversed.

Babu *Saligram Sing* for the respondents :—It is perfectly clear that under the old Act a ryot could hold land for horticultural purposes, and there is a distinct finding to that effect—*Chowdhry Khan* v. *Gour Jana* (1). In that case a ryot cleared jungle land and made the land into an orchard. In this case the land has always been used for an orchard. Therefore, if land could be held under the old Act for horticultural purposes, it certainly can be so held by virtue of section 19 of the present Act, for section 19 says "that every ryot who immediately before the commencement of this Act has by operation of any enactment a right of occupancy in any land shall when this Act comes into force have a right of occupancy in that land."

(1) 2 W. R., Act X, Rul. 40.

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

In this case both the Courts have found that the plaintiffs have held this land for a period of about fifty years, and that they had acquired a right of occupancy in it before the Tenancy Act of 1869 was repealed by the present Act.

It is contended that there is no provision in the present Act by which a person who holds land for any purpose other than that of cultivation can acquire in it a right of occupancy, that the plaintiffs are not ryots as defined in the present Act, and that section 19, which saves a right of occupancy acquired by a ryot before the commencement of the present Act, has no application to the plaintiffs.

In the first place we should be disposed to hold, apart altogether from the provisions of section 19, that if a right of occupancy had been acquired under the old Tenancy Act, it is not forfeited by the repeal of that Act, there being nothing in the new enactment to deprive any person of a statutory right which had been actually acquired. It is unnecessary to say more for the purpose of this appeal; but we should also be disposed to hold that there is nothing in the definition of a ryot in the present Act which would include a person who had taken land for horticultural purposes. The definition is not, as the word primarily would denote, an exhaustive definition; and there is nothing in the Act to indicate that it was the intention of the Legislature to exclude from its operation horticultural land to which the provisions of the repealed Act had uniformly been held to apply.

It is further contended that both the Courts below in holding that the plaintiffs' possession continued up to 1295 have omitted to find in what way they held possession. The plaintiffs' case is set out in paragraph 4 of the plaint, that they held possession through under-tenants; and we must take it that in holding that the plaintiffs' possession was established, the Lower Courts meant to find that it was established in the particular way set out by them.

The appeal is dismissed with costs.

Appeal dismissed.

C. S.