APPELLATE CIVIL.

Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Gordon.

1889 *July* 10.

A. M. DUNNE, RECEIVER TO THE BHUKOILASH GHOSAL FAMILY ESTATE (CLAIMANT No. 3) *v.* NOBO KRISHNA MOOKERJEE, AND AFTER HIS DEMISE, HIS SON BINOD BEHARI MOOKERJEE AND ANOTHER (CLAIMANTS NOS. 2 AND 4).*

Land Acquisition Act (X of 1870)—Apportionment of compensation—Mokurari maurasi title, Evidence of—Presumption of permanent tenure.

A person claimed to hold a maurasi mokurari title to certain land which was acquired under the Land Acquisition Act, but could produce no pottah or evidence of title, other than certain rent receipts, which showed that he or his predecessors in title had held the land in question for nearly one hundred years at, presumably, a fixed rent, the nature of the tenure not being mentioned in such receipt: *Held*, that the presumption was, in the absence of any evidence to the contrary, that the claimant had a permanent and transferable interest in the tenure, and not merely an interest in the nature of a tenancy at will; and that this presumption was strengthened by the fact that his superior landlord, the lakhirajdar had made no attempt to eject him or his predecessors in title during this long period.

The mode of apportionment of compensation between landlord and tenant considered.

THIS was a case under the Land Acquisition Act.

The land acquired amounted to 21 bighas 5 cottahs 8 chittacks; for which a sum of Rs. 11,751, as compensation, had been allowed.

The appellant, claimant No. 3, as receiver of the estate of Sutyanando Ghosal, claimed as lakhirajdar, admitting however that one Nobo Krishna Ghosal, claimant No. 2, was lakhirajdar of 5 bighas 12 cottahs, under whom he held a maurasi mokurari tenure of this 5 bighas 12 cottahs at a yearly rent of Rs. 14-14-9. Claimant No. 2 claimed to be entitled to 8 bighas 14 cottahs as his lakhiraj land, admitting that claimant No. 3 held a tenure under him at a yearly rental of Rs. 14-14-9, but denying that it was one of a permanent transferable nature. Claimant No. 4 was a small tenant of certain bustee lands under claimant No. 3. In support

* Appeal from Original Decree No. 92 of 1888, against the decree of R. F. Rampini, Esq., Judge of the 24-Pergunnahs, dated the 7th of February 1888.

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of his claim, claimant No. 3 being unable to produce any pottah showing the nature of his right to the 5 bighas 12 cottahs in question, put in evidence receipts showing that he held under claimant No. 2 a tenure for which the rent was Rs. 14-14-9, which receipts were considerably over thirty years old; and oral evidence was given to show that the predecessors in title of this claimant had held possession of their land at a fixed rent for nearly one hundred years.

The Judge held that claimant No. 3 had not made out that he held a maurasi tenure under claimant No. 2, and awarded Rs. 2,800, the amount of the compensation-money for the 5 bighas 12 cottahs in dispute, to claimant No. 2.

Claimant No. 3 appealed to the High Court on the ground that his maurasi mokurari right in the 5 bighas 12 cottahs had been established.

Baboo *Hem Chunder Banerjee* and Baboo *Uma Kali Mookerjee* for the appellant.

The *Advocate-General* (Sir *Charles Paul*), Baboo *Gopinath Mookerjee*, and Baboo *Surendra Nath Roy*, for the respondents.

The judgment of the Court (PETHERAM, C.J., and GORDON, J.) was delivered by

GORDON, J.—This is a compensation case under the Land Acquisition Act (Act X of 1870). The Collector acquired 21 bighas 5 cottahs and 8 chittacks of land for public purposes, namely, for the construction of the Kidderpore Docks, and he assessed a sum of Rs. 11,751 as compensation for the same, and as the tenant of a portion of the land so acquired refused to accept the compensation tendered, the Collector referred the case to the Judge under s. 15 of the Act.

The parties who appeared before the Judge agreed to accept the amount of compensation assessed by the Collector, but they were unable to agree as to the proportion in which the compensation was to be divided among themselves. The appellant before us claimed a share of the compensation on the ground that he held 5 bighas and 12 cottahs of the land as a maurasi mokurari tenure under the lakhirajdar, who, while admitting that the appellant held the tenure, alleged that it was merely

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a tenure held as a tenancy at will, and not of a permanent transferable character, and that therefore the appellant was not entitled to any share of the compensation.

The learned Judge has held on the evidence that the appellant has failed to prove that his tenure is of a permanent or mokurari nature, and he has accordingly awarded the whole value of the 5 bighas 12 cottahs, which he has fixed at Rs. 2,800 to the lakhirajdar.

The learned vakil for the appellant contends that the Judge was wrong, and that he ought to have held upon the evidence that the tenure was of a permanent transferable character; and, after carefully considering the matter, we think that this contention must prevail. Indeed, under any circumstances, we think that the judgment of the Judge could not be upheld, for, even allowing that the tenure was not of a permanent character, it is quite clear that the appellant has a valuable interest in the land which could not be determined without a notice to quit, and, under these circumstances, he would be entitled to some share in the compensation.

Then, as to the existence of the tenure: it is true, as the Judge points out, that the appellant has produced no document to show under what circumstances and conditions his tenure was created, but we do not think that for this reason his claim should be rejected, if he can satisfy us by other evidence that his tenure is in fact one of a permanent character. Now, there is other evidence to which we think proper effect has not been given by the learned Judge. That evidence shows that the appellant and his predecessors in title have been in undisturbed possession and enjoyment of this tenure at apparently a fixed rent since the year 1203 (1796), *i.e.*, for nearly one hundred years, and having regard to these circumstances, and in the absence of any evidence to the contrary, we think a very strong and reasonable presumption arises that the appellant has a permanent and transferable interest in the tenure, and not an interest of the nature of a tenancy at will, which is liable to be determined at the pleasure of his landlord.

Further, having regard to the habits and customs of the people of this country in matters of this kind, it appears to us

that the fact that the lakhirajdars have stood by and allowed the appellant and his predecessors in title to continue in uninterrupted possession and enjoyment of the tenure for so many years, without attempting to eject them or vary their rent, strongly indicates that they have all along regarded and treated the tenure as one of a permanent character, and their conduct in this respect gives additional strength to the presumption, which, as I have already said, arises in favour of the appellant from long possession.

On the whole, we think that the Judge was wrong in the view he took, and that the appellant, having a permanent interest in the tenure, is entitled to compensation.

As to the apportionment of the amount of Rs. 2,800: we think that it should be made in the manner laid down in the appeal from Original Decree No. 311 of 1886, *Mokendra Nath Bose* v. *Mohini Bewa* (1), decided on the 20th August 1887 by Tottenham and Beverley, J.J., referred to by the learned Judge in his judgment, and the shares will be ascertained in the office when preparing the decree.

Then as regards the appeal against the ryot: we think there is no ground for our interference. The amount in dispute between him and the appellant is small, and we are not prepared to say that the conclusion which the Judge came to with regard to it is wrong.

For these reasons the appeal of the appellant will be decreed with costs as against the lakhirajdar, and it will be dismissed as against the tenant, but without costs.

T. A. P. *Appeal allowed.*

(1) In this case in which it was admitted that the tenant had a right of occupancy, but it was denied that the right was transferable, and the tenant claimed to be a mokurari maurasidar, their Lordships said:—"We think we cannot do better than follow a decision of a Division Bench of this Court in Appeal No. 477 of 1875, in which the parties were the Zemindar and a ryot with a right of occupancy. In that appeal both parties were represented, and this Court held, with the assent of both parties, that a fair apportionment would be obtained, by allowing fifteen years of the rental to the landlord abatement being granted to the ryot), and by dividing the balance between the two parties in equal shares."