

Before Mr. Justice Rampini and Mr. Justice Stevens.

1897
May 10.

AMBIKA PERSHAD (PLAINTIFF) v. CHOWDHRY KESHRI SATHI
AND OTHERS (DEFENDANTS).^a

Right of Occupancy—Transfer of Right—Suit for registration of name in landlord's serishtā—Right of Suit—Notice—Tenancy Act (VIII of 1885) section 73.

Under the Bengal Tenancy Act (VIII of 1885) the transferee of a holding of a *raiyat*, with right of occupancy transferable by custom, cannot maintain a suit for registration of his own name in the landlord's *serishtā* by expunging that of his vendor.

A declaration that the transferee, and not the old tenant, is responsible for the rent of the holding cannot be obtained without service of notice as prescribed by section 73 of the Act.

THE plaintiff in this case alleged that a certain ancestral *guzasta kashit*, with right of transfer, was held by defendant No. 3 under his landlords, the defendants Nos. 1 and 2; that the defendant No. 3 sold it to the plaintiff under a registered deed of sale, dated 6th August 1889, and put him in possession thereof; that in Jeith (May) 1890 he applied for registration of his name in the landlord's *serishtā* by expunging the name of his vendor, and offered to pay the *salami* and the year's rent, and although the defendant No. 2 received the *salami* and rent, defendant No. 1 refused to do so; that suits for rent were brought by defendant No. 1 against defendant No. 3, in which the plaintiff was compelled to deposit the decretal amounts, and his prayer to be made party to the suits was disallowed. The plaintiff, accordingly, prayed that a declaration be made of his title to get his name registered by expunging that of the defendant No. 3; and that his name might be caused to be so registered in the *serishtā* of defendant No. 1.

The lower Courts found the tenure to be transferable by custom, but held that the plaintiff had failed to prove his title by purchase, and dismissed the plaintiff's suit.

The plaintiff appealed to the High Court.

^a Appeal from Appellate Decree No. 261 of 1896, against the decree of B. C. Chatterjee, Esq., District Judge of Arrah, dated the 7th of December 1895, affirming the order of Babu Chunder Coomar Roy, Munsif of that District, dated the 27th of June 1895.

Moulvie *Mahomed Yusuf* (for Mr. *C. Gregory*) and Babu *Raghunandan Prasad* for the appellant.

1897

Babu *Saligram Singh* and Babu *Mahabir Sahai* for the respondents.

AMBIKA
PERSHAD
v.
CHOWDHRY
KESHRI
SAHAI.

The judgment of the High Court (RAMPINI and STEVENS, JJ.) was delivered by

RAMPINI, J.—This is a suit brought by a person who alleges that he is the transferee of an occupancy holding against the landlord of the *jote*, and who seeks to have it declared that he is entitled to have his name registered in the *serishta* of defendant No. 1, and to have the name of defendant No. 3, his transferor, expunged.

The lower Courts have gone into the merits of the case, and they have dismissed the suit, on the ground that the plaintiff has not established his purchase of the *jote* in question against defendant No. 3.

The only point found in favour of the plaintiff is that the *jote* is a transferable one. The plaintiff now appeals to this Court and impugns the finding of the lower Appellate Court. We do not, however, think it is necessary to enter into the merits of this case, as it appears to us that the suit is not maintainable under the provisions of the Bengal Tenancy Act. The plaintiff is, on his own showing, an occupancy *raiyat*. He is not a permanent tenure-holder, nor a *raiyat* holding at a fixed rate, but is merely a *raiyat* with a right of occupancy, which the lower Appellate Court has found to be transferable.

Under these circumstances we think that he is not entitled to the relief asked for, *viz.*, to have his name registered in his landlord's *serishta*, and to have the name of defendant No. 3 expunged.

The lower Courts have apparently overlooked the fact that such a suit is not maintainable under the Bengal Tenancy Act. It is no longer compulsory for the zemindar to register the names of any tenants in his *serishta*. The Act provides for the official registration of transfers of the rights of permanent tenure-holders and *raiyats* holding at fixed rates. But the transfers of occupancy rights are not so registered, and there is no provision

1897
 AMBIKA
 PERSHAD
 v.
 CHOWDHURY
 KESIRI
 SAHAL.

of law by which they can be registered in the landlord's *serishtu*. When occupancy rights, transferable by custom, have been transferred, it is no doubt open to the transferees to sue under the Specific Relief Act to have it declared that they have acquired certain rights ; but it is clear that if it is the object of such a suit, as it apparently was of this suit, to have it declared that the old tenant is no longer responsible for the rent, and that the transferee is so responsible to the landlord, such a declaration cannot be obtained without the service of the notice prescribed by section 73. Now, it is not alleged in this case that any such notice was served, and this would seem to be a further reason for dismissing this suit. However this may be, it is plain that it must be dismissed on the ground that the suit, as brought, is not maintainable under the provisions of the present law.

We, therefore, dismiss the appeal with costs.

s. c. c.

Appeal dismissed.

Before Mr. Justice O'Kinealy and Mr. Justice Hill.

1897
 May 27 and
 June 28.

SACHITANANDA MOHAPATRA (PLAINTIFF) v. BALORAM GORAIN
 AND OTHERS (DEFENDANTS.)²

Right of suit—Benamidar—Suit for foreclosure of mortgage—Beneficial owner—Parties—Transfer of Property Act (IV of 1882), section 85.

A suit for foreclosure of a mortgage may be brought by the person named in the mortgage deed as the mortgagee, although he was, in fact, only the *benamidar* of the beneficial owner ; and such a suit should not be dismissed because the beneficial owner is not added as a party.

THIS was a suit for foreclosure and for possession of certain lands mortgaged to the plaintiff under a *kut-kobala* mortgage. The defendants pleaded that the plaintiff was only the *benamidar* of his grandfather, who had advanced the money and was in fact the beneficial owner ; that the plaintiff was incompetent to bring the suit ; and that they had not received the full amount for which the mortgage had been given.

Appeal from Appellate Decree No. 1597 of 1895, from the decision of Babu Kedar Nath Mozumdar, Subordinate Judge of Manbhoom, dated the 15th June 1895, affirming the decision of Babu Soshi Bhushan Chatterjee, Munsif of Purulia, dated the 28th January 1895.