entitled to her costs in both Courts below. The respondent must pay to the appellant her costs of this appeal.

*Appeal allowed.*

Solicitors for the appellant: Messrs. *T. L. Wilson & Co.*

Solicitor for the respondent: *The Solicitor, India Office.*

C. B.

1897

AMRITESWARI DEBI *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL.

## APPELLATE CIVIL.

*Before Mr. Justice Macpherson and Mr. Justice Hill.*

MIAJAN (PLAINTIFF) *v.* MINNAT ALI AND OTHERS (DEFENDANTS).*

1896 *July* 6.

*Bengal Tenancy Act (VIII of 1885), s. 22, clause (1)—Effect of Purchase, by Talukdar, of raiyats' holding.*

If a *talukdar*, at a sale in execution of a decree obtained by him against a raiyat, purchase the *raiyat's* interest, such purchase does not extinguish the holding, but merely divests it of the right of occupancy (if any) attached to it.

*Jawadal Huq* v. *Ram Das Saha* (1) followed.

THE owners of a certain *putni taluk* obtained a decree for rent against a *raiyat*. In execution of that decree they brought to sale his *raiyati* holding and purchased it themselves. They then sold it to the plaintiffs, the rent payable being the same as the previous holder had paid. Prior to the sale of the holding the defendant had purchased from the defaulting tenant a portion of his holding; and after the purchase by the plaintiff, he opposed the plaintiff in getting possession of the land.

The plaintiff thereupon instituted a suit for possession. The Munsif held that the *kobala* under which the plaintiff claimed could be treated at any rate as a lease, and passed a decree for possession in favour of the plaintiff. On appeal to the Subordinate Judge this decree was set aside, on the ground that the plaintiff acquired nothing by his purchase from the *talukdars*, there being nothing to transfer. The plaintiff appealed.

* Appeal from Appellate Decree No. 556 of 1894, against the decision of Babu Gopal Chandra Bose, Subordinate Judge of Tipperah, dated the 3rd March 1894, reversing a decision of Babu Romesh Chunder Sen, Sudder Munsif of Comillah, dated the 24th February 1893.

(1) *Ante*, p. 143.

1896

MIAJAN v. MINNAT ALI.

Babu *Gobindo Chunder Das*, for the appellant, after stating the facts, was stopped by the Court calling upon the respondent's pleader.

Babu *Akhoy Coomar Bannerjee* for the respondents.—After the purchase by the landlords the right of occupancy ceased to exist. [MACPHERSON, J.—There is nothing to prevent the landlords from buying up the right of occupancy ; and, if they do, the holding remains in abeyance. They can sell that if they choose.] It is the vendee who is now suing for ejectment. He must prove such a title as will enable him to eject the defendant. The right intended to be sold was the right of occupancy, which did not exist. It is not as if they had created a new tenancy with the right of occupancy ; there was no such intention.

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

The lower Appellate Court is, in our opinion, wrong in the view which it has taken of the plaintiff's position. The facts are shortly these : There was a certain *putni taluk* subject to which there was a *raiyati* holding held by one Sameer. The *talukdars* obtained a decree against him for arrears of rent, brought the holding to sale, and purchased it themselves. After their purchase they sold it to the plaintiffs for a sum of Rs. 230, the rent payable being the rent which had been paid by the previous holder.

The defendants had, prior to the sale in execution of the rent decree, purchased a portion of the holding from the defaulting tenant, and they oppose the plaintiff in getting possession of the land.

The plaintiff asks that possession may be given to him on the strength of his purchase of the *raiyati* holding.

The lower Appellate Court holds that what was sold at the execution sale was the occupancy right ; that that right and the holding were extinguished when the landlords purchased ; that, in point of fact, they purchased nothing, and that consequently the plaintiff took nothing by his purchase from them.

That, we think, is an erroneous view of the position of the parties. Assuming that Sameer had a right of occupancy in the land, there is nothing in the law which prevented the landlords

from purchasing an occupancy holding. What the law does say is that if the landlords do, as landlords, purchase such a holding, the right of occupancy shall cease to exist. In the case of *Jawadul Huq* v. *Ram Das Saha* (1) decided a few days ago by a Division Bench of this Court under section 15 of the Letters Patent, it was held, with reference to the second clause of section 22, that if one of several co-sharers purchase an occupancy holding, the purchase did not put an end to the holding, but that the holding remained divested of the right of occupancy. In the same way, under clause 1 of section 22, we think that the effect of a purchase of an entire occupancy holding by the landlords is not necessarily to put an end to the holding but to divest it in their hands of the right of occupancy, if any, which is attached to it. The defendants in the present case stand in no higher position than the defaulting tenant; they were bound by the sale, and have no existing right, and it is conceded that they could not resist the landlords in taking possession of the land. It seems to us unnecessary to consider the exact nature of the right which the plaintiff acquired by his purchase. That is a matter to be decided between him and his vendors. If his vendors acquired a right as against the defendants to this holding and to *khas* possession of it, there is nothing to prevent their giving the holding to the plaintiff and conferring on him the right to hold it as their tenants. We know of no law which prevents landlords from purchasing a holding and disposing of it. It does not seem to make very much difference whether they being the landlords dispose of the old holding under its old name, or whether they dispose of it as a holding newly created. We think the Munsif was right in holding that the effect of the *kobala* was to create the relationship of landlord and tenant as between the *talukdars* and the plaintiffs. It gives the plaintiff a right to the possession of the holding as their tenant and fixes the amount of rent payable for it. That being so, the appellant is entitled to eject the defendants, who have no right at all.

In this view of the case, the judgment of the lower Appellate Court must be set aside and the decree of the first Court restored. The appellant will get his costs in both the Courts.

H. W. *Appeal allowed.*

(1) *Ante*, *p.* 143.