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or any inference that may be drawn from the facts referred to by the defendants' vakil, as satisfactorily establishing that Shyam Lall was duly authorized. We are also influenced in remanding the case by the further circumstance, that the Judge appears to have been under the erroneous impression that there was no direct evidence available to establish the authenticity of the pottah. [The rest of the judgment is not material to this report.]

Case remanded.

Before Mr. Justice L. S. Jackson and Mr. Justice Kennedy.

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ZOOLFUN BIBEE (DEFENDANT) *v.* RADHICA PROSONNO CHUNDER (PLAINTIFF).*

Right of Occupancy—No Title in Landlord—Title by Possession—Beng. Act VIII of 1869.

A ryot occupying and cultivating land for more than twelve years under a landlord who has no title to the land, nevertheless acquires a right of occupancy. The right is not one conferred by any lessor. It is a right which, by virtue of the law, grows up in the ryot from the mere circumstance of cultivating the land for twelve years or upwards and paying rent due thereon.

Syud Ameer Hossein v. *Sheo Suhae* (1) followed.

IN this case the plaintiff sued to recover possession of certain lands by establishing his title as auction-purchaser. The plaint stated that the lands, the subject of suit, were *julpai* (2) lands of certain mouzas, which had been given up by the Salt Agent, and that, on the abolition of the salt agency, the Collector had settled all the *julpai* lands with the zemindars; that default in

* Special Appeal, No. 308 of 1877, against the decree of L. R. Tottenham, Esq., Judge of Zilla Midnapore, dated the 21st November 1876, reversing the decree of Baboo Jibun Kristo Chatterjee, Munsif of Namal, dated the 27th September 1875.

(1) 19 W. R., 338; see also *Pandit Sheo Prokash Misser* v. *Ram Sahoy Singh*, 8 B. L. R., 165.

(2) *Julpai* lands are those subject to inundations by the sea, and from which salt is procurable. *Mudur* means good arable soil, as opposed to *julpai*.

the payment of the arrears due being made, the *julpai* mehal was brought to sale and purchased by the plaintiff; and that the defendant was an occupant of the land in question without any title, and would not allow the plaintiff to take possession.

The defendant contended and sought to prove that the lands in dispute were not part of the *julpai* lands, but were *mudur* lands of Mouza Raipore. He further alleged, that the estate in which the said lands were included had been let in farm to one Rutnahari Pahari, who had sublet a portion comprising the lands in dispute to one Jonab Ali as a jote, and that the defendant had subsequently purchased the jote tenure from Jonab Ali and had been in possession since the time of such purchase.

The Court of first instance found upon the evidence that the lands in dispute were parts of the *julpai* lands as mentioned by the plaintiff, and that they were not *mudur* lands as pleaded by the defendants. Further found that the defendant, and her vendor Jonab Ali, long held possession of the disputed lands, by cutting jungle and constructing *kherry* (1) bunds, and bringing them under cultivation at heavy expense; and that the defendant had been in possession for about seventeen or eighteen years, and that Jonab Ali was in possession during the Salt Agent's time. On these grounds it decided that the plaintiff was entitled to such proprietary possession as is exercised by a superior landlord, but that the defendant should continue in possession as jotedar having acquired occupancy rights. The plaintiff appealed in respect of this latter portion of the judgment, and the District Judge allowed the appeal for reasons which sufficiently appear in the judgment of the High Court, to which the defendant appealed.

Mr. *R. E. Twidale* (with him Moulvie *Mahomed Yusouf*) for the appellant.

Baboo *Bhowany Churn Dutt* for the respondent.

(1) An artificial lake or reservoir, a tank.

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The judgment of the Court was delivered by

JACKSON, J. (who, after stating the facts, continued):—Against the latter part of the judgment the plaintiff appealed to the District Court, and the effect of the District Judge's judgment was this—that although the defendant might have held this land and paid the rent for twelve years and more, yet that, as she was not paying to the plaintiff, but held the land as a portion of a different estate, the right of occupancy, which the Rent Law recognizes and affirms, could not grow up in such circumstances. He says: "The defendant's jote is in the *mudur* land, and her "encroachment on *julpai* land, over which neither she nor her "vendor had any right, cannot give her a right of occupancy: "she was simply a trespasser." He went on: "The finding of "the lower Court, that the land is part of the *julpai* estate, is "tantamount to a finding that the defendant is only a trespasser. "The respondent's pleader argues that as she was acknowledged "as a tenant by her lessor, she cannot be treated as a trespasser "and ejected, but the party whose tenant she is, had no right in "the *julpai* lands, and he could not confer on her a right which "he did not himself possess." It is clear from that, that the defendant had not ousted any person who was a rightful jotedar or tenant or anybody else; but that he had taken a lease of these lands from a person claiming to have a right, and, as such lessee, had occupied and presumably paid the rents. Now that a person occupying land under one who is not the rightful landlord does, nevertheless, acquire a right of occupancy, is most clearly laid down by Phear and Ainslie, JJ., in the case of *Syud Ameer Hossein* v. *Sheo Suhae* (1), which was apparently a case in direct analogy with the present. In a suit between the zemindars of one estate and the proprietors of another, it had been fairly proved and determined that the land, the subject of the suit, belonged to the plaintiffs; and upon their contending in the suit, which was then before the Court, that even if the defendants had culti-

(1) 19 W. R., 338: see also *Pandit Sheo Prokash Misser* v. *Ram Sahoy Singh*, 8 B. L. R., 165.

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vated for twelve years under the maliks, they could acquire no right of occupancy, inasmuch as the maliks had no title, the learned Judges held, "the mere fact that the person to whom "he for some years paid rent had no title cannot take away from "him the character of ryot or prevent him from counting those "years in the time necessary to give him a right of occupancy "under Act X of 1859." In that decision, as at present advised, we entirely concur. The Judge, it appears to me, states a fallacy when he speaks of a lessor conferring on the ryot a right which he does not himself possess; that is not a right conferred by any lessor. It is a right which, by virtue of the law, grows up in the ryot from the mere circumstance of cultivating land for twelve years or upwards and paying rent due thereupon. It appears to me, therefore, that the lower Appellate Court is mistaken; that the judgment of the Judge, therefore, must be set aside, and the judgment of the Court of first instance restored with costs.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice Markby.

PANCHCOWRIE MULL AND OTHERS (PLAINTIFFS) *v.* CHUMROOLALL AND OTHERS (DEFENDANTS).

1878 *Feb.* 14 & 18 *and March* 1 *and April* 1.

Suit for Management of a Religious Endowment—Advocate-General a party to such Suits—Ambiguous Description of Plaintiff—Jain Sect—Hindu Law—Sebait—Jurisdiction of High Court—Religious Endowments—Act XX of 1863.

The plaintiffs, describing themselves as the Calcutta Tairo Pantee Anungo Punch Brethren, in whom (as they alleged) was vested the management and control of the temples, endowments, and worship of the Degumbery Sect of Jains, and who formed the committee for the management of all the Jain charities as well in Calcutta as in all the other towns and places in India, brought a suit, praying, *inter alia*, for the construction of a will, and for a declaration of their rights thereunder as members of the said Punch, and to have property dedicated by the will to religious purposes ascertained and secured. *Held per* KENNEDY, J., in the Court below, that the description of the character in which the plaintiffs sued was uncertain and ambiguous; that, inasmuch as the property in question was not *dewutter*, the plaintiffs were not sebaits, and all they could claim, therefore, was a right of management; and that a mere manager, without some special power which the Hindu law confers on sebaits, could not institute such a suit; that the plaintiffs not