

LETTERS PATENT APPEAL.

*Before Sir Lawrence H. Jenkins, K.C.I.E., Chief Justice, and
Mr. Justice D. Chatterjee.*

1911

Aug. 25.

AFAZUDDI KHAN

v.

PRASANNA GAIN.*

*Landlord and Tenant—"Protected interests"—Incumbrance—Bengal
Tenancy Act (VIII of 1885), s. 160 (g).*

The plaintiffs held under a sub-lease granted by G, who held under a permanent lease granted by B, B again holding under a permanent lease granted by P. The lease given by P to B authorized B to grant sub-leases.

Held, that the right and interest of G, and therefore of the plaintiffs, are "protected interests" and are not such as can be interfered with by a purchaser under the Bengal Tenancy Act.

APPEAL under section 15 of the Letters Patent by Afazuddi Khan, the plaintiff No. 3, from a judgment of Doss J.

The appeal arose out of a suit for *khas* possession after establishment of occupancy right.

Under the Saidpur Trust Estate, Prasanna Kumar Mitra and others held a permanent *ganti* tenure. Under the *gantidars*, Brojendra Kumar Sen had a *darganti*. Under the holder of the *darganti*, Ganesh Chandra Chatterji and others had a *darmaurusi kayemi ganti*. Under them the plaintiffs owned the holding in suit. In execution of a decree obtained by Prasanna against Brojendra for arrears of rent due in respect of the *darganti* tenure, the latter was sold and purchased by the defendant No. 4, who thereupon served a notice under section 167 of the Bengal Tenancy Act on

* Letters Patent Appeal No. 48 of 1910, in Appeal from Appellate Decree No. 1766 of 1908.

Ganesh and others for annulling their *darmanrusi kayemi ganti*, and also upon the plaintiffs for annulling their *raiyati* holding. The notice, however, did not contain the name of one of the plaintiffs, viz., plaintiff No. 3. The plaintiffs brought the present suit for recovery of possession against the defendant No. 1, who was in possession of the holding under a verbal settlement from the defendant No. 4, the auction-purchaser.

Both the Courts below gave a decree to the plaintiffs on the ground that the non-occupancy holding of the plaintiffs had not been annulled by any valid notice. On second appeal to the High Court, Doss J., being of opinion that the Courts below were right on this point, held that no notice was necessary to be served on the plaintiffs, as the interest of the plaintiffs could not, in the view he took of the case, be said to be a "protected interest." The appeal was thus decreed by Doss J., and the suit of the plaintiffs was dismissed. Thereupon, the plaintiff No. 3 preferred the present appeal.

Babu Mahendranath Roy and *Babu Hiralal Chakrabarti*, for the appellant.

Babu Mohini Mohan Chatterji, for the respondent.

D. CHATTERJEE J. The only question that arises for decision in this case is whether the position of the plaintiffs was that of tenants whose rights may be classed as "protected interests" within the meaning of section 159 of the Bengal Tenancy Act. The plaintiffs held under a sub-lease granted by Ganesh Chandra Chatterjee and others, who held under a permanent lease granted by Brojendra Kumar Sen, Brojendra Kumar Sen again holding under a permanent lease granted by Prasanna Kumar Mitra and

1911
 AFAZUDDI
 KHAN
 v.
 PRASANNA
 GAIN.

1911
 ———
 AFAZUDDI
 KHAN
 v.
 PRASANNA
 GAIN.
 ———
 CHATTERJEE
 J.

others. It is contended that the lease given by Prasanna Kumar Mitra and others to Brojendra Kumar Sen authorized Brojendra Kumar to grant sub-leases, and as the sub-lease granted by Ganesh Chatterjee and brothers was a sub-lease, and as it was therefore within the authority granted by the lease given to Brojendra Kumar Sen, it was a "protected interest" within clause (g) of that section. The words of the lease are that the lessee Brojendra Kumar Sen was to enjoy the property by making *projabili, etc.*, that is, by settling tenants and otherwise. Admittedly Brojendra Kumar Sen settled Ganesh Chandra Chatterjee and others upon the land as sub-lessees under him. The right and interest of Ganesh Chandra Chatterjee was therefore granted by Brojendra Kumar Sen under the authority received by him from Prasanna Kumar Mitra. That being so, the right and interest of Ganesh Chatterjee and therefore of the plaintiffs do not appear to be such as can be interfered with by a purchaser under the Bengal Tenancy Act. The defendants Nos. 4 to 6, therefore, were not entitled to evict the plaintiffs.

The decree of the lower Appellate Court, therefore must be restored with costs.

JENKINS C.J. I agree with the conclusion of Mr. Justice Chatterjee. The case appears to me to turn upon the precise force to be attributed to the Bengali words set out in the judgment of the learned Munsif. My learned colleague, who is eminently qualified to express an opinion as to that, has come to the conclusion that the words contained in the lease from the Mitters to Brojendra Kumar Sen amounted to an express permission in writing to create the interest, which in fact was created in favour of Gonesh Chandra Chatterjee. This is not

only the view of Mr. Justice Chatterjee, but also the view of the Munsif who had fully considered the precise force of the Bengali words; and accepting, as I do, the interpretation placed on these words, the conclusion which my learned colleague has expressed is the only one at which it is possible to arrive. I agree with him that the judgment of Mr. Justice Doss must be set aside, and the decree of the lower Appellate Court confirming that of the Munsif affirmed with costs, including all the costs of the High Court.

S. M.

Appeal allowed.

1911
 ———
 APAZUDDI
 KHAN
 v.
 PRASANNA
 GAIN.
 ———
 JENKINS
 C.J.

LETTERS PATENT APPEAL.

*Before Sir Lawrence H. Jenkins, K.C.I.E., Chief Justice, and
 Mr. Justice D. Chatterjee.*

DEB NARAIN DUTT

v.

CHAIRMAN OF THE BARUIPUR MUNI-
 CIPALITY.*

1911
 ———
 Aug. 29.

*Municipal assessment—Principle of assessment—Valuation of property,
 basis of—Appeal-Committee—Bengal Municipal Act (Beng. III of
 1884), ss. 85, 114.*

In assessing tax upon persons under clause (a) of s. 85 of the Bengal Municipal Act, both the "circumstances" and the "property" referred to in the section must be within the municipality in question.

S. 114 of the Bengal Municipal Act does not lay down that application shall be heard and determined by all the Commissioners appointed as members of the Appeal-Committee.

* Letters Patent Appeal No. 45 of 1910, in appeal from Appellate Decree, No. 1581 of 1908.