

(1878) 07 CAL CK 0019
In the Calcutta High Court

Golabolee

APPELLANT

Vs

Kootesboollah Sircar and Others

RESPONDENT

Date of Decision : 11-07-1878

Acts Referred:

Bengal Tenancy Act, 1885 — Section 27

Citation : (1879) ILR (Cal) 527

Hon'ble Judges : Mitter, J; Maclean, J

Bench : Division Bench

Judgement

Mitter, J.—In this case the plaintiff seeks to recover possession of a tenure from which he alleges that he has been dispossessed by the zemindar-defendant, assisted by the other defendants. The lower Appellate Court found that the plaintiff's allegation as to ejectment is not made out; and it is also found, upon the evidence on the record, that the plaintiff abandoned the land and went to another village. Upon that ground alone it is quite clear that the judgment of the lower Appellate Court could be maintained. But the lower Appellate Court has further decided the case against the plaintiff upon a question of law raised between the parties upon the assumption that the plaintiff has really been ejected from the tenure. We think that the judgment of the lower Appellate Court upon that point also is correct. The facts upon which the plaintiff relies are shortly these: that a suit for arrears of rent was brought against him in the middle of the year 1278 (1871) by the zamindar. A decree was obtained, and in execution of that decree certain moveable property and a hut belonging to the plaintiff were sold. It is also found by the lower Appellate Court that the plaintiff went away from the village without paying the rent of the year 1278. Upon these facts, the District Judge holds that, u/s 6, Beng. Act VIII of 1869, the right of occupancy, which is the only right the plaintiff had, came to an end. Section 6 provides, that "every ryot who shall have cultivated or held land for a period of twelve years, shall have a right of occupancy in the land so cultivated or held by him, whether it be held under a pottah or not, so long as he pays the rent payable on account of the same." It is quite clear, therefore, that the tenant not

having paid the rent of the year 1277 (1870) and of the year 1278 could not claim the right of occupancy given to persons of his class by Section 6 of the Rent Act. Furthermore, Section 22 says: "When an arrear of rent remains due from any ryot at the end of the Bengalee year, or at the end of the month of Jeyt of the fuslee or Willayuttee year, as the case may be, such ryot shall be liable to be ejected from the land in respect of which the arrear is due; provided that no ryot having a right of occupancy or holding under a pottah, the term of which has not expired shall be ejected otherwise than in execution of a decree or order under the provisions of this Act." It is quite clear, therefore, that the tenant in this case, not having paid the rent of the years 1277 and 1278, was liable to be ejected--that is to say, the zamindar had a right to take khas possession of the land; and the proviso in the section secures to the tenant having a right of occupancy only this much, that he shall not be ejected otherwise than in execution of a decree or order under the provisions of the Act above mentioned. Section 52 also is to the same effect; it says: "Any person desiring to eject a ryot, or to cancel a lease on account of non-payment of arrears of rent, may sue for such ejectment or cancelment and for recovery of the arrear in the same action, or may adduce any unexecuted decree for arrears of rent as evidence of the existence of such arrear in a suit for such ejectment or cancelment. In all cases of such suits for the ejectment of a ryot, or the cancelment of a lease, the decree shall specify the amount of the arrear, and if such amount, together with interest and costs of suit, be paid into Court within fifteen days from the date of the decree, execution shall be stayed." On reading those sections together, it is clear that the zamindar's right to eject the tenant accrues on the tenant's non-payment of the rent; but the mode of enforcing that right is restricted by Sections 22 and 52 of the Act. That being so, it is clear that, if in this case the zamindar did not conform to the procedure laid down in Sections 22 and 52, the tenant could recover possession of the tenure only upon the ground of illegal ejectment, and not upon the ground of any right. In this view of the case, we think that the lower Appellate Court was right in applying the limitation prescribed in Section 27 of the Bent Act. We, therefore, think that, upon both these grounds, the decision of the lower Appellate Court is correct, and the special appeal must be dismissed with costs.