

(1925) 11 CAL CK 0013
In the Calcutta High Court

Khetra Mohun Ghose and Another

APPELLANT

Vs

Lakhi Kanta Pal and Others

RESPONDENT

Date of Decision : 17-11-1925

Acts Referred:

Bengal Tenancy Act, 1885 — Section 181

Citation : AIR 1927 Cal 46

Hon'ble Judges : Panton, J; Greaves, J

Bench : Full Bench

Judgement

Greaves, J.—This is an appeal by the defendants against a decision of the Subordinate Judge of Howrah confirming a decision of the Munsif. The suit out of which this appeal arises was brought by the plaintiff's for possession of certain land on establishment of their tenancy right therein. The plaintiffs' case was that (he lands in suit appertained to the chakran lands of Defendant No. 3 which he held under a service tenure under a zemindar; that the lands were resumed by the landlord on the surrender by Defendant No. 3 and that they were leased by the landlord to the present plaintiffs. The plaintiffs say that failing to obtain possession of the land leased to them they were forced to commence these proceedings.

2. Two contentions were urged before us on behalf of the appellants. First of all they say that the lands were not chakran lands but niskar lands of Defendant No. 3 and that they had acquired occupancy rights in these lands by cultivating them as raiyats for a period of over 70 years, and secondly, they contended that even if the lands were chakran lands and not niskar lands they had acquired right of occupancy by their possession for the necessary period. The findings of both Courts were that the land were chakran and that the defendants had been in occupation thereof since the year 1851 but that no occupancy rights had been acquired having regard to the nature of the land. The appeal has been argued before us on behalf of the appellants on two grounds. First of all, it is stated that the decision that the lands were chakran and not niskar has been arrived at by

the admission of inadmissible evidence that is, of statements contained in the documents of title of third parties and the second point is that occupancy rights can be acquired in these lands even if they are chakran lands. So far as the first point is concerned, clearly we think the documents Exhibits 2A and 2B were inadmissible but we think that the oral evidence was clearly admissible apart from the documents themselves. It is urged, however, before us that it is impossible for us to say in second appeal how much weight was attached by the lower appellate Court to the inadmissible evidence and that in any case the matter should be referred back to that Court for consideration of the oral evidence excluding the documents complained of. But having regard to the view we take on the second point it is not necessary to definitely decide this contention.

3. So far as the second point is concerned the conclusion I have come to is that occupancy right can be acquired in chakran lands and that such rights have been acquired by Defendant No. 2 in the land in suit and consequently, the appeal must succeed on this ground. Under the provisions of Section 181 of the Bengal Tenancy Act occupancy rights could not have been acquired if such rights had accrued after the passing of the Act itself. But these rights were acquired long prior to 1885 and they are in my opinion, protected by the provisions of Section 19 of that Act. It was suggested that the provisions of Section 181 govern the provisions of Section 19 but the view I take is that the provisions of 8.181 relate to the prevention of the acquisition of occupancy rights during the continuation of the Act itself and that they do not affect the rights acquired as under the provisions of Section 6 of Act X of 1859. That section provides that

every raiyat who has cultivated or held land for a period of 12 years has a right of occupancy in the land so cultivated or held by him,

and in my opinion, by virtue of that provision the appellants have acquired rights of occupancy in the land. It is contended before us on behalf of the respondent that the appellants and their predecessors-in interest were not raiyats but were in the position of under-raiyats under the holder of the chakran lands. But I confess that this argument does not appeal to me and it certainly was not given effect to in the two cases to which I shall presently refer which seem to me to govern the decision in this appeal. These two cases are *Sitikanta Roy v. Bipradas Charan* [1918] 27 C.L.J. 556 where it was held by this Court that under circumstances that seem to me similar to those now before us rights of occupancy can be acquired under Act X of 1859 and were not taken away by the provisions of Section 181 of the Bengal Tenancy Act. The second case is that of *Bam Kumar Bhattacharya v. Ram Newaj Rajguru* [1904] 31 Cal. 1021 where it was held that rights of occupancy might be acquired by a tenant even in choukidari chakran lands u/s 6 of Act X of 1859. In the judgment in that case the argument that the tenants there were tenants at will and not in the position of raiyats was considered and discarded; and accordingly, in my opinion, unless we are prepared to hold that these decisions are Wrong and refer the matter to a

Full Bench the appeal is concluded thereby. I am not prepared to say that these decisions are not correct and accordingly, in my opinion, the appeal is concluded thereby.

4. There is, however, another argument which was raised on behalf of the respondents and it is this that these two decisions relate to chowkidari chakran lands and that the same principles do not apply to chakran lands which are of a private and not of a public nature. But I feel difficulty in distinguishing between the rights acquired in respect of chakran lands which are of a private nature and those acquired in respect of chowkidari lands which are of a public nature. We think, therefore that the principles of these two cases govern this appeal. We are, however, pressed by two further decisions of this Court. The first of these cases is that of Jafarruddin Saha v. Kumar Jaminiballav Sen 23 C.W.N. 136 but I do not think that any reliance can be placed on that decision for the purposes of the appeal now before us. No particulars are given in the judgment itself and the report itself is defective in that they are not supplied in the statements of the case which should have accompanied the report. Whether the rights in that case were acquired after the passing of the Bengal Tenancy Act or before under Act X of 1859, I cannot gather from the report and so no reliance can be placed on the case for the purposes of overruling the two decisions to which we have referred.

5. Then comes the case of Satyendra Nath Banerjee v. Krishnasakha Kar AIR 1922 Cal. 193 in which it would appear that Mr. Justice Mookerjee, who delivered the judgment of the Court has receded from the position which he took up in the case reported in Ram Kumar v. Ram Newaj [1904] 31 Cal. 1021 to which judgment he was a party. But here again the decision did not really turn on that point but on the question of limitation. Accordingly, we do not think that we can take that decision as really differing from the decision in Ram Kumar v. Ram Newaj [1904] 31 Cal. 1021.

6. For the reasons, therefore, which I have indicated I think that the appeal must succeed and the decree of the lower appellate Court set aside and the suit dismissed with costs in all Courts.

Panton, J.

7. I agree.