

(1914) 04 CAL CK 0046
In the Calcutta High Court

Midnapore Zemindary Company, Ltd.

APPELLANT

Vs

Hrishikesh Ghosh

RESPONDENT

Date of Decision : 24-04-1914

Acts Referred:

Citation : AIR 1914 Cal 757 : (1914) ILR (Cal) 1108

Hon'ble Judges : Jenkins, C.J.;Woodroffe, J;Stephen, J;Holmwood, J;D. Chatterjee, J

Bench : Full Bench

Judgement

Jenkins, C.J., Stephen, Woodroffe, Holmwood and D. Chatterjee, JJ.—The question referred for the decision of the Full Bench is whether the right of a non-occupancy raiyat is heritable. In *Karim Chowkidar v. Sundar Bewa* . ILR (1896) Cal. 207 it was held by a Division Bench that the right of a non-occupancy raiyat (who does not hold under any express agreement) in his holding is not heritable. In arriving at this conclusion, Mr. Justice Banerjee says that "under the law as it stood before the Bengal Tenancy Act was passed, non-occupancy raiyats not holding under any express engagements, were treated as tenants-at-will or as tenants from year to year. [See Act X of 1859, Section 25; see also the observations of Mr. Justice Field in his Introduction to the Bengal Regulations, p. 40, and those of Mr. Justice Trevor in *Thakooranee Dessee v. Bisheshur Mookerjee* (1865) B.L.R.F.B. 202 : 3 W.R. (Act X) 29.] Under the old law, non-occupancy raiyats were the lowest class of raiyats and, if the respondents' contention be correct, it would follow that all raiyati holdings were transferable. But this would be somewhat inconsistent with certain provisions of law, such as Regulation VIII of 1819, Section 11, Clause 3, which speak of hereditary raiyats."

2. Any opinion of Mr. Justice Banerjee is entitled to respect, but the passage we have cited is open to question.

3. It is not accurate to speak of non-occupancy raiyats under the old law. The expression non-occupancy raiyat first appears in the Bengal Tenancy Act and the holding of non-occupancy raiyats is not the exact counterpart of any holding

under the old law, by which we understand the learned Judge to mean the law prior to 1859. For the present purpose it is sufficiently accurate to say that raiyats in early days were either khudkast or paikast. It is unnecessary to discuss the several kinds of these two classes of raiyats, but contrasting one class with the other, it may be said that the position of the khudkast was unquestionably superior to that of the paikast.

4. The khudkast was, speaking generally, a man of the village in which his holding was situate, and it is, we think, conclusively established that his holding ultimately was hereditary.

5. The paikast was not a man of the village where the land cultivated by him was situate; he was an immigrant.

6. There is reason to think that originally he was a tenant-at-will, but until the demand for land exceeded the demand for cultivation, this probably was of no great moment.

7. But as this economic position was reversed, the inconveniences of tenancies-at-will became apparent, and so we find they gradually gave way to tenancies of a more fixed character, either from year to year or for a greater interest (Whinfield on Landlord and Tenant).

8. While the tenancy was at will, it obviously could not be heritable, for it would of necessity be terminated by the raiyat's death. But with the greater fixity of later times this would no longer be so, and on the raiyat's death there would be an interest that could devolve on his heir even though the tenancy was from year to year. So matters stood when Act X of 1859 was passed. That Act and the Bengal Act of 1869 and the Bengal Tenancy Act of 1885 have deprived the division of raiyats into khudkast and paikast of its importance, and under the Bengal Tenancy Act we find raiyats grouped as (a) Raiyats holding at fixed rates, (b) occupancy raiyats, and (c) non-occupancy raiyats. (section 4). In Section 20 mention is also made of "Settled Raiyats" a class largely composed of, but not identical with, occupancy raiyats, for though every settled raiyat has occupancy rights, some raiyats who have occupancy rights are not settled raiyats.

9. These several classes of raiyats, where the Bengal Tenancy Act governs, have taken the place of khudkast and paikast raiyats, with which the practical lawyer has no concern except in order to trace the growth of raiyati rights. The result then is that (apart from possible exceptions with which we have no concern in this case) when these Acts were passed, a tenancy-at-will had ceased to be the measure of any raiyati rights and so all had interests that are capable of descent.

10. More than that, we think (apart from the possible exception to which we have referred) the holdings of raiyats were heritable, and this is distinctly recognised by the Bengal Tenancy Act. Thus the meaning ascribed to raiyat by Section 5, Clause (2) includes successors in interest. Section 20 Clause (3) identifies the heir of a raiyat with his predecessor for the purpose of acquiring

the status of a settled raiyat. Section 44 bestows on a non-occupancy raiyat a fixity of tenure that points to heritability. Chapter IX contemplates improvements which it would be unreasonable to expect in a tenancy not heritable, and entitles a raiyat to compensation for improvements, made by his predecessors in interest (Section 82.) And certain rights of non-occupancy raiyats are "protected interests" u/s 60.

11. Much has been made of Section 26, on which it is sought to build up the argument referable to the maxim *expressio unius exclusio alteris*, but this maxim is at best an uncertain guide to the true meaning of a Statute. Here it seems to us to have no application. Section 26 deals with the devolution of a right of occupancy, not of a holding pure and simple, and as this right of occupancy is a creature of the Statute and a doubt had been expressed as to the heritability of a right of occupancy under Act X of 1859, there was good reason for making this provision in relation to a right of occupancy, which would not apply to the ordinary holding of a raiyat, which is not a creature of the Act though some protective provisions are applied to it which make for fixity of tenure.

12. It is true in *Lakhan Narain Das v. Jainath Panday* ILR (1907 Cal. 516 the question now under consideration was referred to a Full Bench of this Court. But no conclusive answer was given, for while two of the learned Judges refrained from expressing any opinion as to whether or not a non-occupancy right was heritable before the passing of the Bengal Tenancy Act, only Mr. Justice Geidt held that it was not; and the remaining two, Mr. Justice Brett and Mr. Justice Mitra held that it was. It is the inconclusive result of that case that has necessitated the present reference.

13. It is unnecessary to recapitulate the reasons severally advanced by Mr. Justice Brett and Mr. Justice Mitra in support of their view that a non-occupancy holding is heritable, for we are in complete accord with the opinion expressed by them.

14. The answer then that we give to the question referred to us is that, apart from possible exceptions with which we have no present concern, the holding of a non-occupancy raiyat is heritable.

15. As the question has arisen in an appeal from appellate decree, under the rules of the Court, we must dispose of the whole appeal.

16. The question of heritability affects only a moiety of the land in suit and the opinion we have expressed is decisive against the plaintiffs' claim to that moiety. The claim to the other moiety manifestly cannot be supported.

17. The result is that the decree of the lower Appellate Court must be confirmed with costs.