

(1892) 04 CAL CK 0007
In the Calcutta High Court

Peary Mohun Mookerjee

APPELLANT

Vs

Kunaris Chunder Sircar and Others represented by their
mother and next friend Bindoo Bashini Dabea and Others

RESPONDENT

Date of Decision : 01-04-1892

Acts Referred:

Bengal Tenancy Act, 1885 — Section 26, 5, 86

Citation : (1892) ILR (Cal) 790

Hon'ble Judges : Prinsep, J; Hill, J

Bench : Division Bench

Judgement

Prinsep and Hill, JJ.—This is a suit for arrears of rent brought originally against the heirs of a deceased raiyat who had rights of occupancy. Certain persons intervened, and were made parties to the suit in the first Court, who claimed to be the actual occupancy raiyats by reason of a sale to them by the deceased tenant. In the first Court they obtained a decree, the Munsif being satisfied from the kobala that the landlord's fee was paid and that the transfer was valid. The heirs of the deceased tenant were exempted. The landlord then appealed to the District Judge, who found that the appellant was not bound to recognize defendants 5 and 6, that is, the transferees claiming title from the deceased occupancy tenant, or to receive rent from them unless he wished to do so.

2. The District Judge came to this conclusion on the evidence, finding that the landlord's fee had not been paid and that the change in the tenancy had not been recognized by the landlord. The District Judge, however, proceeded to hold on the authority of an unreported case of this Court Kally Dass Misra v. Nadiar Chand Ghose decided by Petheram C.J. and Banerjee, J. on the 1st May 1890. that, inasmuch as the heirs of the deceased tenant did not occupy the lands, they were not liable for the rents. He, however, affirmed the decree of the first Court against defendants 5 and 6, the transferees from the deceased occupancy tenant.

3. In second appeal before us it is contended that, inasmuch as admittedly the

deceased tenant had rights of occupancy, and it was found by the District Judge that there had been no valid transfer of those rights of occupancy to defendants 5 and 6, his heirs, defendants 1 to 4 were liable for the rents, since they had not surrendered their holding, which was heritable by law.

4. We have referred to the judgment on which the learned District Judge relied, and we do not find that it is in point. The nature of the tenancy in that case is not stated. Section 26 of the Bengal Tenancy Act declares that, if a raiyat dies intestate in respect of the right of occupancy, it shall, subject to any custom to the contrary, descend in the same manner as other Immovable property. No custom is set up in the present case, nor is it stated that the raiyat has left any will. The rights of defendants 1 to 4, as heirs of the deceased raiyat, having rights of occupancy, are admitted. Section 86 provides for the surrender of his holding by a raiyat not bound by a lease or other agreement for a fixed period, that is to say, as in the present case, by a raiyat having rights of occupancy, and we may observe that the term "raiyat" as defined by Section 5, Clause 2, includes the successors in interest of persons who have acquired such a right. Consequently, inasmuch as the heirs of a raiyat who may have died intestate having rights of occupancy succeed to his holding, and inasmuch as a raiyat, within which term is included such heirs as the defendants 1 to 4, is bound to pay rent unless he surrenders in the manner described by Section 86, the heirs are liable to pay rent whether they hold the lands or not. We may observe that the zemindar would not be at liberty to occupy the lands of such a tenant, unless he has obtained from the heirs something amounting to an actual surrender, and unless he himself has proceeded in the manner prescribed by Section 87. It seems to us, therefore, that the heirs of a deceased tenant, dying intestate, having rights of, occupancy, are entitled to hold on until they have, expressly, or in any manner from which a surrender may be presumed, as is stated in Section 86, relieved themselves from such liability, and that, unless they have surrendered or done something from which a surrender in the terms of Section 86 can be presumed, they are liable for the rent. Non-cultivation of the land would not necessarily amount to a surrender. This appears from Section 86. We are therefore of opinion that the plaintiffs are entitled to a decree against defendants 1 to 4 and that, inasmuch as the Lower Appellate Court has found that defendants 5 and 6 are not entitled to hold these lands, they should be struck out of the decree. We therefore order that the decree in this case to amended accordingly.

5. The appellant will be entitled to his costs from defendants 1 to 4.