

(1879) 01 CAL CK 0007
In the Calcutta High Court

Rai Komul Dossee

APPELLANT

Vs

J.W. Laidley and Others

RESPONDENT

Date of Decision : 14-01-1879

Acts Referred:

Citation : (1879) ILR (Cal) 957

Hon'ble Judges : McDonell, J; Jackson, J

Bench : Division Bench

Judgement

Jackson, J.—We are quite unable to agree in the judgment of the Court below in the present case.

2. The suit was on the part of Rai Komul Dossee, who holds an ijara settlement under the zamindar of a certain turuff, and she seeks to recover possession of a large area of land situated within that turuff--the area is described as being one thousand six hundred and odd bighas--which land is in the occupation of certain persons constituting the firm of Robert Watson and Co., who are also owners of an indigo concern, called Domekul factory. The first occupation of this land appears to have taken place under a potta granted by the then zamindar in the Bengali year 1260 (1853) to Mr. James Dalrymple, who was then, we may take it, local representative of the firm of Watson and Co., and was the manager of the Domekul indigo concern. That was expressed to be a lease of the land for ten years from 1260 to 1269 (1853 to 1862) at an annual jumma calculated at the rate of 12 annas per biga upon an area of 889 bigas. Upon the expiry of that lease, Watson and Co. apparently by virtue of an understanding with the zamindar, held over for a few months, and in the month of Bhadur 1270 (1863), a fresh lease was granted, which the defendants have not filed, but a counterpart or kabuliat has been put in by the plaintiff. That is addressed to the same zamindar who granted the first lease by persons calling themselves Messrs. Robert Watson and Co. of Domekul factory. It recites the previous settlement for ten years, an application for a further settlement and consequent grant by the zamindar, and in that grant the following expressions occur: "I have voluntarily

executed a kabuliyat and filed it in your zamindari office; I will throughout the period of the ijara annually pay the said jumma month by month. I will be liable up to the term for the culturable or waste state of the lands, for drought and inundation, for diluvions, reformations, for the increase or decrease of rent, they having no concern with you; I will enjoy the said lands by raising various crops, by cultivation and settlement through ryots up to the term, and no condition for change in the rents will come into operation." In the document it is stated that the land had been remeasured and now amounted to 911 bigas, and it is not apparent how the area was further expanded so as to be, as alleged by the plaintiff, 1,621 bigas. We are told now that this increment was the result of accretion, the land being chur land.

3. The answer of Messrs. Robert Watson and Co. to this suit was that the plaintiff could not recover, because, under the combined operation of the two leases granted, they had acquired a right of occupancy over this large tract of land, and therefore could not be ejected.

4. Upon this question, which was the most material in the suit, the Subordinate Judge records the following observations: "The defendants cultivate indigo on the disputed land which is matan cultivable land. The evidence given by the defendants proves that they have cultivated the land with indigo for more than twelve years. Taking the two leases together and coupling them with the oral evidence adduced by the defendants, there can be no doubt that the defendants held and cultivated the land for more than twelve years. The defendants having cultivated the land with indigo for the period they held, they are to be treated as ryots of the land, so far as the cultivation of indigo is concerned. That being so, they come under the provisions of Section 6 of Beng. Act VIII of 1869, and they must be held to have acquired a right of occupancy in the land. Every one of the elements necessary to constitute a right of occupancy being present here, the defendants must be considered to have acquired a right of occupancy, notwithstanding the fact that the word ijara is in the second lease. The insertion of the word ijara in the second potta cannot certainly amount to an express stipulation within the meaning of Section 7, that a right of occupancy would not accrue. I think the word ijara is a misnomer there quite out of place."

5. Now, Section 7 was expressly inserted in the Rent Act with the view of preventing a ryot from taking undue advantage of the declaration contained in Section 6 by enabling the landlord to set up an express contract between him and the ryot, which excluded the notion of such a right of occupancy growing up, and as appears to us, it is not only the occurrence of the word ijara in the document of 1270(1863) that so operates in this suit, but several other expressions that occur throughout. It must be borne in mind that the first lease granted to Mr. Dalrymple is dated before the passing of Act X of 1859. The second lease was subsequent to that Act, and consequently any change in the phraseology of the grant must be taken to have great significance, and when it is a change which tends to exclude the notion of the growing up of a right of

occupancy, I think the reasonable view is, that such expression was expressly inserted by the landlord with that intention. Therefore, even if the tenure were such, and if the defendants were persons of such a condition that we could hold terms of Section 6 to be applicable to them, but for the terms of the subsequent potta, then, I think, we should be bound to hold that the subsequent lease excluded and prevented the growing up of the right of occupancy. But it appears to me, that in point of fact to apply the terms of Section 6 to a holding, such as the present, would be to extend the meaning of Section 6 to a most inordinate and dangerous degree. It is no doubt the case that when a ryot holds land which he may cultivate, and perhaps for some time did cultivate, the circumstance that he has sub-let that land to an under-tenant does not deprive him of the right of occupancy, or prevent such a right growing up. But the case is altogether different when the tenure is of such a nature that it could not be within the means of occupancy or cultivation of a particular ryot, and here the fact is that there is no particular individual ryot. Here is an association of persons constituting a firm who have a large capital, and who as Baboo Unnoda Prosad Banerjee observed, "devote their energy to the improvement of the soil and for the benefit of the country" and also for their own benefit, and in respect of such a body, there is also an authority directly bearing on the case.

6. In the case of *Cannan v. Kulash Chunder Roy Chowdhry* (25 W.R., 117) decided by Mr. Justice Macpherson and my brother Morris, it was expressly held that the Agra Bank as the representative of an indigo concern or firm could not be regarded as entitled to plead a right of occupancy. They said,--"An indigo concern or firm has no corporate or legal existence which we can recognize in a suit like this. So far as the question of a right of occupancy is concerned, all that we can look at is occupancy by particular individuals; and as far as such occupation of this land goes, the present appeal fails."

7. In those observations we concur, and it would be impossible, we think, to hold that a firm or partnership could take the grant of land and by arrangement amongst themselves, continuing for a series of years by changes in the partnership, hand over the land from one person to another under the guise of a right of occupancy. What the firm of Robert Watson and Co. took from the Zamindar in this case was not a ryot's tenure for the purpose of ordinary agricultural use. It was a tract of land amounting to an estate to be worked by them by means of capital for the purpose of carrying out a particular speculation. It appears to me that neither the terms of Act X of 1859 nor of Beng. Act VIII of 1869. contemplate the right of occupancy growing up in such a case as this. For these reasons it appears to me that the judgment of the Court below is erroneous, and that the plaintiff is entitled to judgment. The appeal is accordingly allowed with costs.