

(1889) 05 CAL CK 0007
In the Calcutta High Court

Rakhal Das Addy, Executor to the Estate of late Govind
Chunder Addy

APPELLANT

Vs

Dinomoyi Debi and Others

RESPONDENT

Date of Decision : 17-05-1889

Acts Referred:

Citation : (1889) ILR (Cal) 653

Hon'ble Judges : Rampini, J; Pigot, J

Bench : Division Bench

Judgement

Rampini, J.—This is a suit for ejectment from an area of about half a bigha of land after service of notice to quit. The land has been found by both the lower Courts not to be agricultural or horticultural land. The Lower Appellate Court remarks that "it is too small for such a purpose, it is in a town or suburb, and it seems always to have been used for trading or residentially purposes." The Court of First Instance gave the plaintiff a decree, but the Lower Appellate Court has held that the defendants have a right of occupancy in the land in consequence of its occupation by their vendor and his family for about a century, and that, therefore, they cannot be ejected. The learned Additional District Judge cites the case of Gungadhur Shikdar v. Azimuddm Shah Biswas ILR Cal. 960 as an authority for the view which he expresses, that it is not only agricultural tenants that can plead occupancy rights, and that there may be rights of occupancy in suburban lands let for purposes of building, though these rights may not be cognizable under a law intended only for agricultural landlords and tenants." But the case of Gunqadhur Shikdar v. Azimuddin Shah Biswas ILR Cal. 960 would seem to us to be no authority for such a proposition. All that is laid down in that case is that when land has been let, not for agricultural, but for building purposes, and when buildings of a substantial character have been erected on it for more than 60 years, and the defendant and his ancestors have been in occupation of it for that period, the Courts are at liberty to presume, if they think fit, that the original grant of the land was of a permanent character. Moreover, none of the rulings which have been cited in this case in any way support the

view taken by the learned Additional District Judge. On the other hand, the contrary has been expressly held in the case of *Ramdhun Khan v. Haradhun Paramanick* 12 W.R. 404 : 9 B.L.R. 107 note, in which it has been said by Markby, J.: "It was stated that if a man (altogether independently of Act X of 1859, and even assuming that that Act would not apply) grants, we will say, a house to another for an indefinite term, the tenant, merely by occupation of it under that grant, acquires, on equitable principles (for that is what it comes to), a right for occupancy. I know of no such principle of law. If authority were needed, it seems to me that such a proposition of law was expressly repudiated by the decision of the Privy Council in a case reported in 11 Moore's Indian Appeals towards the end of the volume (*Dhunput Singh v. Gooman Singh* 11 Moore's I.A. 433 at p. 465. I do not say that a grant, which was originally wholly indefinite in its terms, may not be made perpetual by the subsequent conduct of the parties, but that is a matter of fact, and no facts have been shown in this case of that kind, nor has the Court been asked to infer it. What we have been asked to hold, and what we cannot hold, to give the defendants what they ask, is, that simply by occupying under a grant for no specified period and by paying rent under it a tenant acquires a right of occupancy. I think that right is entirely confined to the special cases in which the Legislature has granted it." In no subsequent ruling has any other principle been laid down.

2. The learned Additional District Judge has not found that there is anything in the circumstances of this case, or the conduct of the parties, which would justify the inference that the lease originally granted to the predecessor of the defendants' vendor was of a permanent nature. He has abstained from coming to any such finding, and we think rightly so, for there would seem to us to be circumstances in the case which point to the opposite conclusion. In the first place, the defendants' *kobala*, dated 27th Bhadro 1274, recites that the land was held under a *pottah* dated 1229, and that the deeds relating to the land have all been made over, by the vendor to the defendant No. 1. It is a most significant fact that the defendants do not produce this *pottah*, or attempt to account in any way for its absence. This conduct of theirs certainly lays them open to the imputation that they are purposely withholding this *pottah*, as it would have shown that their tenancy is not of a permanent character. Secondly, it is an undisputed fact in this case that the rent of the half bigha of land from which it is sought to eject the defendants has very recently been enhanced; so that no presumption in favour of the defendants from long occupation of the disputed land at a fixed and unvaried rate of rent can arise. Thirdly, the buildings on the disputed land are found to be but huts made of non-permanent and non-substantial materials, which can be easily removed. We therefore do not think that any presumption as to the permanent character of the original grant of the disputed land could fairly have been made in the case, or that there are any circumstances to negative the right of the landlord, as the plaintiff is admitted to be, to re-enter on the land after taking proper steps to determine the defendants' tenancy, as he has taken.

3. We therefore set aside the decree of the Lower Appellate Court and restore that of the Court of First Instance. This order carries costs in the suit in all the Courts.