

(1910) 04 CAL CK 0014
In the Calcutta High Court

Ram Lal Sukul and Others

APPELLANT

Vs

Bhela Gazi and Others

RESPONDENT

Date of Decision : 29-04-1910

Acts Referred:

Citation : 6 Ind. Cas. 370

Hon'ble Judges : Woodroffe, J;Richardson, J

Bench : Division Bench

Judgement

Woodroffe, J.—It has been firstly argued that the Court of Appeal should have held that the tenancy was an occupancy rayati holding and that the tenancy having been in existence and purchased by the Dichits prior to the passing of the Bengal Tenancy Act in 1885, Section 22 Clause (2) of that Act did not apply with the result that there, was no merger of the occupancy right. This question, though raised by the grounds of appeal before us, was not raised in the lower Court and cannot be now gone into. There is nothing in the paper-book on this point which is sought to be established by reference to a passage in the evidence. But then it is said that assuming Section 22 does, apply and that u/s 22 Clause (2), the occupancy right then existing was extinguished by the transfer of the right of Goloke Singh to the Dichits, the lower appellate Court should have held that by reason of Dicbits subsequently continuously holding the land as raiyat for a period of 12 years and more from the date of their purchase, they acquired a new occupancy right. It is contended that the occupancy right which is extinguished by the section is only the right / which existed at the date of the transfer and that there is nothing to prevent the acquisition of a new occupancy rights. To hold this would, 1 think, defeat the policy of the section. And further the owner of the holding could not acquire a right adversely to himself in his other character as co-proprietor. The lower appellate Court, therefore, correctly held that the properties purchased by the plaintiffs in execution of the decree for arrears of rent are a rayati holding without occupancy right. The question then arises whether the plaintiffs under section. 159 have power to annul under-tenancies as encumbrances. It has been contended that they cannot, that the

provisions of Chapter XIV do not apply to purchasers of non-occupancy holdings and that the only remedy open to a purchaser of such a holding is u/s 49 by ejectment. I think, however, this is not so. A non-occupancy raiyat is a raiyat and the land held by him is a holding. Chapter XIV is general in its terms and refers to "sale for arrears under decree." Section 159 speaks of a holding and where the Act intends to refer to occupancy holdings it so qualifies the terms. The latter section provides that a sale of a holding for arrears will pass the holding subject to protected interests and with power to annul encumbrances. Then, is that which it is sought to annul an encumbrance? I think that on the case made by the defendants here, it is. It may be observed that a non-occupancy raiyat is not prohibited from subletting and may have an under-raiyat under him and may create a protected interest u/s 160, Clause (g), if his landlord allows him so to do. An encumbrance may be cheated by a non-occupancy raiyat on his holdings in limitation of his own interest however limited by way of sub-lease. I am of opinion, therefore, that there was an encumbrance which plaintiffs had power to annul and the appeal must, therefore, be allowed with costs and the decree of the first Court restored..

Richardson, J.

2. I agree.

S.A. No. 1304 of 1908.

3. This decision will also govern appeal from appellate decree No. 1304 of 1908.