

(1905) 04 CAL CK 0008

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 812 of 1903

Ramdhari Singh and Another

APPELLANT

Vs

M.H. Mackenzie

RESPONDENT

Date of Decision : 28-04-1905

Acts Referred:

Citation : (1905) 04 CAL CK 0008

Final Decision : Dismissed

Judgement

1. The suit out of which the second appeal arises is a suit for ejectment of the Defendant from an area of 22 bighas, 2 cottahs of land. Decree for ejectment was given and a second appeal preferred to us. We remanded the appeal on the 10th April 1901 and directed a re-hearing. The appeal was then re-heard. A further second appeal has now been preferred to us.

2. The question at issue is a simple one--viz., whether the Defendant has an occupancy right in the 22 bighas odd of land. The District Judge, like the Court of first instance, has held that he has.

3. This finding is impugned before us. Two arguments have been pressed on behalf of the Appellant:--(1) That the Judge has not found that the Defendant has been holding the land for 12 years as a raiyat: and, (2) That the lease of 1887, on which the Defendant relies, was not a lease for cultivation, but a usufructuary mortgage lease.

4. We consider that this appeal must fail. The first ground of appeal is certainly without foundation, for the District Judge has explicitly held that the Defendant Mr. Mackenzie has been in continuous possession as a raiyat of land in the village for more than 12 years. The lease referred to in the second ground of appeal is certainly in our opinion a lease for cultivation. It grants a zuripeshgi lease for 9 years of a 2 ans. 13 gundas share of the villages, but also, explicitly, conveys to the lessee 18 bighas and 1 cottah of zerait land. These 18 bighas 1 cottah, together with 4 bighas and 1 cottah previously obtained by the Defendant, from

tenants holding under the factory, make up the disputed 22 bighas, 2 cottahs from which it is sought to eject the Defendant. Now the lease expressly provides that "the said ticcadar should hold and enjoy possession over the leased out property and cultivate and cause the same to be cultivated properly, and grow or cause to grow indigo jai, sugar-cane, or any other sort of crops which he may like and so on." This is clearly a lease for cultivation. The learned Counsel for the Appellant cites the cases of the Bengal Indigo Co. v. Raghubar Das ILR 24 Cal. 72(1896), and Ram Khelawan Roy v. Sambhoo Roy 2 C.W.N. 758 (1898) as authority for the proposition that when there is a zuripeshgi, there can be no raiyati lease. These cases are clearly distinguishable from the present. In the Bengal Indigo Co. v. Raghubar Das ILR 24 Cal. 272 (1896), the area of the land exceeded 100 bighas. Here the subject of the lease is only 18 bighas. Hence the presumption is that the lessee is a raiyat. In the case of Ram Khelawan Roy v. Sambhoo Roy 2 C.W.N. 758 (1898), the whole of the rent was paid in advance as zuripeshgi, which is quite different from the Defendant's lease of 1887. The Defendant's lease of 1887 provided that the zuripeshgi advance was to be paid off in 4 years, and that for the following years rent was to be paid every year in 4 instalments. But however this may be, we do not think that either of these cases lays down that a raiyat by taking a zuripeshgi lease of land of which he was previously or then put in possession as a raiyat loses his raiyati status or divests himself of his right to acquire a right of occupancy in his land. The finding of the District Judges is clear that the Defendant has been holding land in the village as a raiyat for more than 12 years. He is, therefore, a settled raiyat of the village and cannot be ejected. We dismiss the appeal with costs.