

CALCUTTA HIGH COURT

Mohima Chunder Shaha

Vs

Hazari Pramanik

(Prinsep and Trevelyan ,JJ.)

30.04.1889

JUDGMENT

Prinsep and Trevelyan, JJ.

1. The defendants are cultivating ryots who were placed on this property by the Collector and have held possession for many years, but not for a sufficient period to create a right of occupancy, they are therefore of the class termed in the Bengal Tenancy Act "non-occupancy ryots." The plaintiffs in a suit against Government have succeeded in proving their title to the land.
2. The matter for our decision is whether the plaintiffs are entitled to eject the defendants, non-occupancy ryots, as having no right to hold the lands because the Government from whom they de-rived their title had no right and title itself, and no relationship of landlord and tenant has ever existed between the plaintiffs and defendants by recognition of their right to cultivate by receipt of rent.
3. In order to establish the right of defendants as non-occupancy ryots under the Bengal Tenancy Act and as such not liable to ejectment except under its special provisions (none of which admittedly apply to this case), it becomes necessary to determine whether they are non-occupancy ryots as therein defined.
4. Section 5 (2) declares that "a ryot means primarily a person who has acquired a right to hold land for the purpose of cultivating it by himself, or by members of his family, or by hired servants, or with the aid of partners, and includes also the successors in interest of persons who have acquired such a right." And Section 4 specifies non-occupancy ryots as one of the classes of tenants under that Act.
5. A "tenant means a person who holds land under another person, and is, or but for a special contract would be, liable to pay rent for that land to that person."-Section 3 (3).

6. It cannot be said that defendants, though not under actual contract with the plaintiffs, do not hold land under them, because from the nature of their occupancy, they cannot be regarded as holding independently or adversely, but are they "liable to pay rent for that land" to the plaintiffs? They would clearly be liable to pay for use and occupation of the land, but would that fall within the definition of rent as set out in the Act? "Rent means whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant." Section 3(5).

7. It seems to us that under these definitions, the defendants are ryots, and therefore, non-occupancy ryots within the terms of the Bengal Tenancy Act.

8. It is next contended that Section 5 (3), which declares that "a person shall not be deemed to be a ryot, unless he holds land either immediately under a proprietor or immediately under a tenure-holder," shows that there must be some title acquired from the landlord or his predecessors in interest, and not from a person who held adversely to him and without any title himself. But we think that this clause is intended merely to define the position of a ryot in respect to a proprietor or tenure-holder, and to distinguish him from what is afterwards described as an under-ryot; for under the general definition of the term "ryot," unless the further definition were given, there would be no distinction between the class dealt with by the Act as under-ryots, and ryots the landlords of under-ryots and not themselves proprietors or tenure-holders.

9. It may seem anomalous that the defendants who have no title from the plaintiffs directly, or through their predecessors in estate, should thus be protected as non-occupancy ryots from ejectment as trespassers at the plaintiffs' free will; but it seems to us that this is in accordance with the general spirits of the Bengal Tenancy Act, which regards a landlord as a rent-receiver and as able to eject a tenant or cultivator of the soil, not an under-tenant, only for certain specified reasons and conditions none of which here exist. If the defendants had acquired a right of occupancy by occupation for twelve years, they would have been protected from ejectment, and as non-occupancy ryots they are also protected, except as specially provided.

10. The appeal is, therefore, dismissed with costs.