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OCCUPANCY RIGHT

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OCCUPANCY RIGHT

ITS HISTORY AND INCIDENTS

TOGETHER WITH AN INTRODUCTION DEALING WITH
LAND TENURE IN ANCIENT INDIA

BY

RADHAROMON MOOKERJEE,

VAKIL, AUTHOR OF 'THE LAW OF BENAMI TRANSACTIONS.'



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To

The Hon'ble Justice Sir Asutosh Mookerjee, Kt., C.S.I.

**To whose noble enthusiasm, earnest endeavour,
and organising capacity, scientific research in
every department of knowledge owes so much.**

PREFACE

The subject of the present thesis is "*The origin and growth of the right of occupancy in agricultural land and the incidents thereof.*"

The subject naturally divides itself into two parts—I. The origin and growth of occupancy right, and II. Its incidents.

In building up my theory of the origin and growth of occupancy right, I have had the advantage of the writings of many learned authors who have made laborious and minute researches into the nature of the landed rights in this country. I have attached hereto a list, by no means exhaustive, of the authorities I have consulted and have stated fully in the footnotes the sources from which every particular information is derived. While I acknowledge to them my indebtedness for the informations they have furnished, I have, by my own independent research, collected materials from our ancient Sanskrit books, the authentic history of the country during the Mahomedan Period and from Government Reports and Minutes, and recorded my own personal observations thereon. My research has been conducted independently without advice from or collaboration with others.

The portions of the thesis which I claim to be original are indicated below.

It has been said by a high authority that the occupancy right is a *creation of Act X of 1859*. I have attempted to shew in this thesis that this is far from the truth. A careful perusal of our Sanskrit Sastras and also of the record of the Mahomedan rule would convince any one that the *proprietary right in the soil always belonged to the cultivator* and that the King was only entitled to a share of its produce and was never regarded as its proprietor. And as the proprietary right carries with it the right of possession, there can be little doubt that the cultivators in ancient times had also the *right to occupy* the land. The rise of a class of landlords between the King and the village community did not disturb those cultivators in their occupation of the land. In those days in a state of society when there was plenty of unoccupied land and population sparse, and the competition consequently was not amongst tenants for land, but amongst

landlords for raiyats, it gradually became the *custom not to evict these resident raiyats so long as they paid their rent*. From none of these could any rent be demanded except what was fair according to received ideas, or in other words, *customary rent*. Thus immunity from ejection and enhancement—the two privileges implied in the right of occupancy—were possessed by the tenants from the most ancient times. Besides these, there was another class of tenants who were *residents of a neighbouring village*, where they could not obtain enough quantity of land to cultivate, and who sought in a different village to bring under cultivation the lands which the resident raiyats of that village were unable to cultivate. It was only when such persons came to *ask for leave to occupy the land* that the *rent could be fixed* with some advantage. But even in their case it had to be *determined at a low rate*. The reason was that not having their residence in the village those people were not so amenable to pressure, and, what was more, they could at any time abandon the land for which they had no particular attachment. They have been held by all authorities to have no specific rights and to be mere tenants-at-will. Though *theoretically* they were *liable to ejection, in practice*, however, the competition then being for tenants rather than for lands, *no ejection could actually take place*. Thus those tenants also enjoyed some sort of protection both from eviction as well as from rack-rent.

But with the establishment of British rule, however the old state of things entirely changed. With peace, good government and improvement of commerce there has arisen great demand for land, and *rent*, which was formerly settled by custom, has now come to be *fixed by competition*. The Permanent Settlement made no provisions for the protection of the raiyats, and the Revenue Sale Laws expressly gave powers to the auction-purchasers to *oust all but the resident raiyats*. And when we recollect the fact that nine-tenths of the revenue-paying estates were soon after sold for arrears of revenue, we can well imagine how extensively the raiyats were ousted from their holdings by the purchaser of estates when a demand for land arose. The *resident hereditary raiyats* were indeed by law entitled to protection, but even in their case, owing to the absence of any definite rule of law and the constant change of landlords, possessed of large powers of disturbing their *vested rights*, these often came to be *lost sight of*. Besides, the non-resident raiyats in the village, who were mere tenants-at-will and who had yet been long cultivating the same pieces of land which they improved

by their own labour, if not by their own capital, were, therefore, equitably entitled to some sort of protection.

Act X of 1859 came to afford to the raiyats the protection which they so sorely needed. It gave equal protection to both these classes of raiyats by enacting that *twelve year's continuous cultivation of the same piece* of land would confer on them the right of occupancy in that land and that they could no longer be evicted therefrom. This provision substantially restored the *khud kasht* raiyat to the former position which he had always enjoyed during the Hindu and the Moslem periods and from which he had considerably fallen. For probably in those days a raiyat who had cultivated the same holding for the space of twelve years was presumed to have given the pledges required by the community for protection against ouster. The Act further conferred rights of occupancy on a large class of raiyats who had previously been mere tenants-at-will. The rule became the Charter of the cultivating classes and it became the ambition of every tenant to retain possession of his fields for twelve years and thereby to gain the coveted status of occupancy tenant with protection against arbitrary eviction, rack-renting and hereditary rights. On the other hand, it became a common practice with the landlord to evict the tenant and then to reinstate him or to induce him to change the particular fields he held for others, before his twelve years were up. The B. T. Act, 1885, considerably enlarged the basis of the claim to the occupancy right in view of these practices by enacting that the tenant, on proving that he has held, *any land in the village for twelve years continuously*, attains the status of a "settled raiyat," and becomes, as such, entitled to an occupancy right in all the lands he holds for the time being.

With regard to the origin of the occupancy raiyat, or *khud kasht* raiyat as he is called, there are two different theories put forward. According to Dr. Field they were *outsiders*, who had been permitted to settle in the village and had to contribute to the Raja a share of the produce as government revenue and to the village community something in addition. According to Mr. Baden Powel, on the other hand, they were not settlers from outside but *original members* of the village community who cultivated their own lands and were liable for shares of the government revenue and nothing in addition. They were, in fact, proprietors of the soil, which they cultivated.

I have attempted to shew that both the above views contain only half truths. There can be no doubt that the *original settlers in the village*, who were all members of the same family, and who, in course of time, formed the village community, were the *proprietors of the village lands*, which they themselves cultivated. But the struggle for existence compelled them to *amalgamate with strangers*, who, although *originally had no right* to the village lands, would then *become as much proprietors* of the lands which they had themselves cleared and on which they had established themselves. But when the struggle for existence ceased to trouble the community it became a close corporation and *refused to assimilate the strangers*. As soon as this stage was reached there could be no doubt that any new-comer would only be *admitted into the village* on terms of paying rent for the use and occupation of lands, or, in other words, *as tenants* under the original proprietors and acquired no proprietary right in them themselves. With the rise however of a class of aristocracy intermediate between the King and the village community, who assumed the landlord's right over the *village proprietors* whom they *degraded to the position of tenants* under them, the distinction that had existed between the outsider and the proprietors themselves soon disappeared. All were now tenants under the landlords. Besides these, there were the non-resident raiyats of the village, already spoken of, who yet cultivated the village lands and have been held by all authorities to be mere tenants-at-will. Act X of 1859 gave all these different classes of tenants the right of occupancy without any distinction as to their origin. Thus all raiyats in the village—whether the original members of the village community, or the outsiders assimilated into it, or the outsiders not so assimilated but settled in the village as tenants, or the non-resident cultivators in the village,—could become occupancy raiyats after they had held the same land for twelve continuous years. And the B. T. Act of 1885 went further and provided that by only holding *any* land in the village for the same period such right *could be acquired*.

In dealing with the incidents of occupancy right, besides the authorities already referred to, I have to depend more largely on the reports, both government and private, of the decisions of the High Court interpreting the provisions of the laws relating to the same. I have tried to find out what may be called the leading cases on the subject and to deduce from them the underlying principles on which they are based and indicated them in my thesis in a way which, I venture to say, has not yet been done in any of the annotated editions of the Acts.

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Addenda.

Bringing case law down to September 1919.

Add page 110, para. 1 last but one line after "5" :—

"A tenure-holder may settle a raiyat on the land of his tenancy, and a raiyat also may, in his turn, sublet the land of his holding to an under-raiyat. Consequently, the mere fact that a *tenant has sublet* his land does not, by itself, establish conclusively that his status is that of a tenure-holder and not that of a raiyat. Further, a *tenure-holder*, though a middleman who collects rent, may *yet cultivate a portion* of the land himself, just as a *raiyat*, though he himself a cultivator, may *settle a portion* of the land *with under-raiyats*. The test to be applied in such a case to determine the status of a tenant is furnished by S 5(4) B. T. Act, namely the *purpose for which* the right of *tenancy* was *originally acquired*. In cases when the *origin* of the tenancy is *unknown* the *mode of user* may furnish a valuable clue to determine the original purpose of the tenancy, and where the *terms* of the grant are *ambiguous*, evidence of *conduct subsequent* the parties may also be admissible."

—*Secretary v Digambar*—27 C. L. J. 334.

Add page 111, para. 3, line 6 after "4."

"There is no room however, for its application where the *terms of the original grant are known*."

—*Secretary v Digambar*—27 C. L. J. 334.

Add page 111, para. 3, line 18 after "4."

"In determining the status, therefore, of a tenant, *viz.*, whether he is a tenure-holder or a raiyat, two elements have to be borne in mind, *firstly*, the *purpose* for which the land was acquired, and *secondly*, the *extent* of the tenure or holding. A close examination of the definition clauses makes it quite obvious that both these elements are closely inter-related. The law assumes the raiyat to be the actual cultivator of the soil, either by his own labour, or the labour of the members of his family, or by his hired labourers, and it assumes also that ordinarily a larger area than 100 Bighas would make cultivation by personal agency impossible. The presumptions provided in S 5(5) is founded on that hypothesis."

—*Devendra v. Bibhudhendra*—27 C. L. J. 543, P. C.

Add page 112, after para 2.

“ But before a person can become a *settled raiyat* of a village he must be a raiyat. Mere *occupation of homestead* in a village for more than 12 years would not make the occupier a settled raiyat of the village.”

—*Kamal v Ganesh*—47 Ind cas 329.

Add page 113, para 3, before “ A raiyat.”

Upon the question whether a raiyat holding at fixed rates after he has held the land for 12 years in a village can become a settled raiyat of the village and acquire a right of occupancy there is divergence of judicial opinion.”

—*Lakhi v Hamid*—27, C. L. J. 284 (286).

Add page 116, after footnote 1.

1a. *Akhil v Hasan*—18 C. L. J. 262=19 C. W. N. 246, referred to in *Gopal v Japai*—28 C. L. J. 84=22 C. W. N. 618.

Add page 118, after para. 1.

“ An occupancy right may be acquired by a joint family, and a landlord in contracting with an individual may be dealing with a whole family represented by that individual. An occupancy right frequently is a part of the ancestral estate, and therefore the younger sons of a mitakshara joint family has interest in it, which it is beyond the power of the father to destroy or encumber for anything but a family purpose.

—*Sukru v Brahmapurai*—4 P. L. J. 354.

Add page 130, para. 2, line 10.

“ So *Ghatwali* lands were subject to the acquisition of occupancy right and the B. T. Act, S 180 did not take away such right acquired or enjoyed.”

—*Siti Kanta v Bipradas*—27 C. L. J. 556=22 C. W. N. 763.

Add page 131, line 20, after “tenure.”

Further, where, for instance, land is held under a *Jaigirdar* who held his *Jaigir* as a *Kotali Jaigir*, the *Zemindar* is entitled to have the land that is given to the *Kotwal* for the purpose of performing his duty, returned to him in the same condition as is given to the *Kotwal*, apart from the rights of any other person. A right of occupancy cannot, therefore, be acquired in a land held under a service tenure.

—*Jafaruddin v Jamni*—28 C. L. J. 249=23 C. W. N. 136, See *Suren Sen's B. T. Act*, 3rd Ed. 70.

ADDENDA

Add page 135, para 1, line 4.

"Where certain *ch r* lands formed a part of the holding for which the raiyat had paid rent continuously for 12 years but during the period they had occasionally subnerged. *Held* that the mere fact of submersion did not destroy the right of the tenant to acquire occupancy right therein. Parts of lands comprising the holding may have subnerged for long or short period but they did not for that reason cease to be held by the tenant and to form part of his entire holding.

—*Kesho v Jirdhan*—2 P.L.J. 4.

Add page 148, para. 2, after 5.

"In dealing with the presumption the real question at issue is *whether the rent has been changed or not, and not whether one uniform rate has been paid or not.* There may be cases in which a raiyat might not have paid his rent for many years prior to the institution of the suit for enhancement; but if there has been no change in the rent payable by him, he is not deprived of the presumption which the law has expressly laid down for his benefit. The payment at a uniform rate is one mode of shewing that the tenure was held at a uniform rate; but what is only a particular mode of proceeding to the solution of a question ought not to be confounded with the question itself."

—*Kshirod v Gour*—27 C. L. J. 281, following *Ahmed v Golam*—11 W. R. 432.

Add page 148, para. 2, line 2, from bottom.

"The rule and presumption may thus be applicable to *several parcels* of lands of *which the holding consists* when the question arises. Part of the holding may be *inherited* land, part may have been *acquired* by purchase from another raiyat. In either case, the *raiyat may tack on his own occupation* of the land at an unvaried rent to the *occupation* at an unvaried rent of his *predecessors in interest* who, as regards lands acquired by purchase from another raiyat, will *include his vendor* and his vendor's predecessors. So *subdivisssion or amalgamation* does not destroy the presumption.

—*Abhoy v Rajani*—22 C. W. N. 904=29 C. L. J. 371.

Add page 157, end of para. 2.

"Where the raiyat came into occupation of the land agreeing to pay rent at the rate of Rs. 22-14 As after deduction of the remissions mentioned, and subsequently executed a *Kabuliat* by which he bound himself to pay the said *Jama*, in the schedule

to which is mentioned the remission (*Hajat*) of Rs. 4 as a mark of favour, to him on account of his services as *Pradhan* and the question was whether it was a permanent remission annexed to the grant or a temporary and personal remission contingent on the performance of services as a *Pradhan*. It appeared that ever since the death of the original tenant rent was realised at the rate of Rs. 22-14 As for a period of a quarter of a century. *Held*—that under such circumstances the landlord is not entitled to rent at the higher rate.

—*Umesh v Surendra*—29 C. L. J. 8.

Add page 159 after para. 1.

“ But where on a fresh survey made by the landlord the area of the raiyat’s holding was increased, and the raiyat agreed to pay an enhanced rent, which is considerably in excess of the authorised increase of two annas in a rupee, for the holding as found by measurement, *Held*—that as the landlord cannot point to any particular piece of land for which the raiyat agreed to pay him so much rent, the rate must be considered as applied to the whole area and for the purpose of considering S. 29 we must take the average rate per Bigha, throughout the whole area.”

—*Sonaula v. Bhagabati*—28 C.L.J. 142.

Add page 181, line 6.

“ The fact that a certain item is dealt with in the *Kabuliat* in a separate clause and is stipulated to be paid separately from the rent and also the fact that it is not included in the instalments of rent have important bearing upon the question whether parties intended to treat it as part of the rent or as something different from rent.”

—*Bijoy v. Krishna*—21 C.W.N. 939.

Add page 185, para. 1 after “payment.”

“ *Bhaoli* rents are not ascertained rents, and therefore interest cannot be claimable thereon under S. 67 B.T. Act. And though as soon as the Court adjudicates upon the claim the amount becomes an ascertained amount, interest cannot even then be claimed under the said Section as it applies only to rents which are payable quarterly and cannot apply to *Bhaoli* rents which are payable at two periods constituting two instalments. The Interest Act however, entitles the landlord to interest on the *Bhaoli* rent provided the raiyat withholds the payment without any reasonable and probable cause.”

—*Bisheshar v. Husain*—4 P.L.J. 282.

Add page 182, after para. 2.

"The rent due to the landlord is also suspended where he, having let out a portion of the land to an earlier lessee, lets it out again with other lands to a subsequent lessee and is in consequence unable to put the latter in possession of such portion as when he has ousted him from a portion of the holding".

—*Manindra v. Narendra*—23 C.W.N. 585.

Add page 187, line 1 from bottom after "himself."

It could not be ignored by the landlord. The sale does not *ipso facto* cancel incumbrances and a notice must be given under S. 167 B.T. Act, (See *Beni v. Rewat*—24 Cal 746 *Kalikanand v. Bipradas*—21 C.L.J. 265 = 19 C.W.N. 18) the procedure provided by that Section being the only mode of annulling an incumbrance (*Sashi v. Gagan*—22 Cal 364.) It follows that the sale by the landlord in execution of his rent decree is subject to the mortgage, but with the right in the purchaser (even though he be the landlord) to annul the mortgage within one year. And where the landlord as purchaser has not done this, the person who takes the land in settlement from him, takes it subject to the mortgage which is still subsisting.

—*Pran v. Atul*—22 C.W.N. 662 per Greaves J.

Add page 187, para 1, line after "incumbrance."

"The purchaser under the mortgage decree cannot oust the purchaser in possession under a prior rent decree, even though there has been no notice under S167. He may be regarded as a *second mortgagee* and as such has the *right to redeem* the mortgage by payment of the amount due under the rent decree.

—*Sur t v. Murlidhar*—4 P.L.J. 362, See also *Chiodette v. Quadress*—1 P.L.J. 161.

Add page 187, after para 1, new para.

"An *incumbrance* implies a *limitation* of the rights of the tenant and not a total *extinction* of them. The sale of a *portion* of a nontransferable occupancy holding cannot therefore create an incumbrance in it and the landlord purchaser at a sale in execution of his rent decree is not required to annul the interest of a purchaser of a portion of a nontransferable occupancy holding.

—*Fazarali v. Poroo*—28 C.L.J. 266 (following *Tomizuddin v. Khoda*—11 C.L.J. 16, *Abdul v. Ahmadar*—22 C.L.J. 356, distinguishing *Chandra v. Kalli*—23 Cal 254, *Jogeshwar v. Abed*—3 C.W.N. 13). Also *Bijoy v. Surendra*—29 C.L.J. 4.

Add page 188, after line 1.

“So where a landlord, after obtaining a decree for arrears of rent against a tenant in respect of a nontransferable occupancy holding, recognised the purchaser of the holding, who had bought it long before the institution of the suit for rent, as his tenant without any liability being taken by the purchaser for the decretal debt, and subsequently put the decree which he had obtained against the old tenant into execution and sold the holding. *Held*—that the old tenancy had come to an end, and the holding had passed to the purchaser. Therefore the landlord could not put it up to sale as the holding of the old tenant.”

—*Girish v. Naendra*—23 C.W.N. 654.

Add page 191, after para 2, new para.

“If the landlord desires to obtain a decree good against the land, under the B.T. Act, he must ordinarily (apart from any question of representation) implead all the cotenants, including the heirs or legal representatives of a deceased cotenant. But for purposes of a money decree (in the absence of express agreement to the contrary) he is free, under S. 43 of the Contract Act, to sue any or all of the tenants.”

—*Krishna v. Kali*—22 C.W.N. 289 where all previous cases cited and discussed.

Add page 192, para 4.

“An application to have the rent commuted should be entertained and determined on the merits by the officer to whom it was presented by the applicant. Consequently the S. D. O. cannot transfer an application received by him to a settlement officer.”

—*Jadu v. Pran*—27 C.L.J. 569=22 C.W.N.

Add page 193, after para 3 new para.

Jurisdiction of Civil Court.

The Civil Court it is well-settled is not competent to examine the propriety of an order of commutation made within jurisdiction under S 40 B.T. Act; in other words, it cannot determine whether in the circumstances of the particular case, commutation was or was not properly directed; or whether the amount assessed as cash rent is or is not adequate. But if a question arises it is incumbent upon the Civil Court to satisfy itself that the order is made with jurisdiction; for an order made without jurisdiction is a nullity, and does not affect the rights and obligations of the parties. Where, therefore, the rent was commuted by an officer not competent to do so, the land-

lord was held entitled to recover the price of the produce which the tenant was, before the commutation, liable to deliver."

—*Jadu v Pran*—27 C.L.J. 569.

Add page 194 footnote 4.

" See *Asutosh v. Haran*—30 C.L.J. 41 where all the previous cases on the subject are considered."

Add page 195 footnote :—" See *Pokhan v. Rajani*—23 C.W.N. 614."

Add page 199 para 1, line 8, after "all".

"A claim for compensation may be either in addition or as alternative to a demand on the tenant to remedy the misuse or the breach."

—*Bahadur v Makhan*—29 C.L.J. 430.

Add page 199 footnote 2 " followed in *Bahadur v. Makhan*—29 C.L.J. 430.

Add page 199, line 8 after "all 2."

Add page 199 footnote 4 :—" =29 C.L.J. 40."

"The object of giving the notice is to give the tenant an opportunity of remedying the breach so that on remedying it and on payment of compensation he may avoid ejection. A notice requiring him to quit the land even if he remedied the breach is not a valid notice."

—*Kali v. Kali*—23 C.W.N. 569.

Add page 205, line 13, before "where" and above "parties" "3a".

Add page 205 after footnote 3.

3a Hkabar v. Hora—13 C.L.J.1=15 C.W.N. 335 :
Khatar v. Sadruddee—34 Cal. 922.

Add page 205 to footnote 4 "*Pyari v. Hem*—16 C.W.N. 730.

Add page 205 foot note 5 "*Jeypore v. Rukmini*—29 C.L.J. 523 P.C."

Add page 206 footnote 1 "*Jeypore v. Rukmini*—29 C.L.J. 528 P.C.

Add page 201, para 1 after "cultivating it" in line 11.

"At the time when the Revenue Sale Law was passed, the law relating to landlord and tenant in force was Act X of 1859, and under that Act there were two classes of occupancy raiyats, viz., occupancy raiyats at fixed rent, and occupancy raiyats who did not hold at fixed rates of rent. Both these classes of occu-

pancy raiyats are protected under the provisions of the Revenue Sale Law.

—*Lakki v Hamid*—27 C.L.J. 384.

Add page 207, para 1, line 19 after "fixed rates."

"Occupancy raiyats at fixed rates of rent" do not find any place in the classification of raiyats under the B.T. Act. But if a raiyat had a right of occupancy at a fixed rent under Act X of 1859 we do not think that he lost his right of occupancy and the privileges attaching to it after the passing of the B.T. Act, merely because occupancy raiyats holding at fixed rates of rent are not separately mentioned in the classification of raiyats under the B.T. Act.

—*Lakki v Hamid*—27 C.L.J. 284=

Add page 208, para 1 after "occupancy" in line 1.

Mookerji J. in referring to the omission of 'a raiyat holding at fixed rates' from the protection suggests the explanation that 'the policy of the Legislature was to protect the raiyat, but not necessarily to the complete detriment of the purchaser of a tenure at a sale for arrears of rent. If a raiyat holding at a fixed rate of rent were protected from ejection, the purchaser would acquire the property in an encumbered condition; for, he would be unable, not only to eject the raiyat but also to enhance the rent. On the other hand, if occupancy raiyats and non-occupancy raiyats alone were protected from ejection, while their possession would be maintained, they would be liable to have their rent enhanced from time to time, at the instance and for the benefit of the purchaser of the tenure."

—*Lakki v. Hamid* 27 C. L. J. 284 (287)

Add page 213, para 2 after 7.

"The mere fact that the tenant has a house in an adjacent *mouja*, does not deprive him of his right to erect upon his occupancy holding another house for the purpose of making a residence for himself and his family."

—*Mahadeo v. Sheogulum*—2 P.L.J. 634.

Add page 223, footnote 1.

"*Chandi v. Shamla*—28 C.L.J. 91=22 C.W.N. 179 *Per* Beachcroft J. where all cases on the point were again reviewed and the conclusion of Coxe J. accepted"

Add page 223, footnote 6 after "21 C.W.N. c.l.v. iii"

"=29 C.L.J. 388=23 C.W.N. 435: *Alimuddi v. Chintaharan*—29 C.L.J. 388=23 C.W.N. 436.

Add page 224 footnote 5 after " 21 C.W.N. cl. viii."

"= 29 C.L.J. 368 = 23 C.W.N. 435."

Add page 224 line 1 after ' circumstances '.

"As pointed out in a very recent case:—"It seems to us that although the lease may not be given in evidence there is no valid reason why the tenancy cannot be proved *alinnde* by possession and payment of rent to the rayat."

—*Nibaran v. Ram*—29 C.L.J. 479 : *Gonesh v. Thanda*—24 C.L.J. 539. But see *Jarip v. Durja*—16 C.L.J. 144 = 17 C.W.N. 39,

Add page 224, para. 1, line 8 after. " 2 "

"Although the under-raiyats' lease may be absolutely void and therefore passed no title to him, by reason of the fact that it was granted in excess of what a raiyat was entitled to grant to an under-raiyat under the provisions of the B.T. Act, yet if the sublessee had been in possession of the property on the basis of the *kabuliat* when he was dispossessed, he had sufficient interest in the property and can prove his title by his possession and is thus entitled to recover the land, if he is dispossessed, on a declaration of his title thereto."

—*Gour v. Baloram*—22 C.W.N. 61.

It is worthy of note that it was not a case in which the under-raiyat in possession, being dispossessed, brought a suit for recovery of possession, within 6 months of his dispossession under S. 9 of the specific Relief Act in which no question of title can be gone into.

Add page 225, footnote 3.

"See *Lani v. Mahammad*—20 C.W.N., 948 : *Aminuddi v. Ananda*—28 C.L.J. 507."

Add Page 228, end of para 2 after "Purpose".

"But this is only where the sub-lease is not granted in contravention of S. 85. Otherwise, notices under S 167 or S 49 are not necessary.

—*Bhuban v. Badan*—30 C.L.J. 201.

Add page 230, para 3, line 6 after 6.

"An express consent in writing within the meaning of S 88, B.T. Act does not mean a consent which is to be implied from certain documents. Therefore, the consent, if any, which arises by implication from the rent receipts granted by the landlord in respect of a part of a tenure or holding, with a knowledge that the tenancy has been sub-divided by the tenants, or, from

jamawasil baki, or, from road cess returns filed by the cosharer of the landlord, cannot be a consent in writing within the meaning of S 88, B.T. Act. Such documents cannot be taken as *principal evidence to prove a consent* in writing which does not *in fact* exist; they can only be used as evidence of such consent *firstly* when it is proved that there had been in fact a *consent in writing*, *secondly* when such consent in writing, although sought for *could not be produced* and *thirdly* therefore, it must be *presumed*, at any rate, against the person who made it, that there had been a *consent* and that that consent had been *in writing* as stated by some witnesses who were believed to have proved it—*Rajani v. Hara*—41 Ind. Cas. 501=22 C.W.N. 693.

Add page 231 before para 2.

“But it is not always easy for the tenant to produce an *express consent*. It may be *verbal* or acted on by both parties or may be lost. But”

—*Rajani v. Hara*—41 Ind. Cas. 501=22 C.W.N. 693.

Add page 231, pa a 2 after “distribution”

“The *rent roll* mentioned therein is a *jamabandi*—a permanent document kept in the estate or *sherista* of a landlord, which contains a *list of the tenants and the rents payable* by them which is kept up and amended from time to time. A *jama wasil baki* (an annual statement of the rents payable and received from a particular estate) is not a *rent roll* within the meaning of the proviso.”

—*Rajan v. Hara*—41 Ind. Cas. 501=22 C.W.N. 693.

Add page 239 footnote 6.

“See also *Goher v. Alifuddin*—30 C.L.J. 13.”

Add page 249 para 2, lines 13 after “transferee”.

“Even if there is a customary rate of *nazar* which the landlord is obliged to accept the transferee can have no title under the custom until he pays or tenders the *nazar* at that rate.”

—*Mina v. Ichamoyee*—28 C.L.J. 258=22 C.W.N. 929.

Add page 249, para 2 line 17 after “nazar”

In order to establish a custom of transferability subject to the payment of a customary *nazar* the evidence must shew that the *landlord is bound to recognise* the transfer *when nazar* of the amount, or the rate, *determined by custom*, is *tendered* to him. There is all the difference between a *fixed nazar* which the *landlord is obliged to accept*, whether he likes it or not, and a *nazar* which is bargained for and paid as the price of the consent which he may give or withhold as he pleases. A practice or course

of business in a zemindary office according to which transferee is recognised provided that the amount of the *nazar* is satisfactory to the landlord is not sufficient."

—*Mina v. Ichamoyee*—27 C.L.J. 587=22 C.W.N. 929.

Add page 250, para 1, line 4 after "it"

"The payment of *nazar* without more is an indication that the *jotes* are not transferable without the landlord's consent, given on receipt of the *nazar*."

—*Mina v. Ichamoyee*—28 C.L.J. 587=22 C.W.N. 929.

Add page 250, para 1, line 18 after "unsuccessful".

"A custom which leaves the amount or rate of *nazar* indefinite must be void for uncertainty." The position is no whit better than when the *nazar* is determined by agreement. No one knows what he has to pay and the landlord can demand what he pleases and refuse his consent unless he is satisfied."

—*Mina v. Ichamoyee*—28 C.L.J. 258=22 C.W.N. 929.

Add page 262, footnote 3:—"Goher v. Ahfuddin—30 CL.J. 13.

*Add page 264, para 2, end*¹.

Where the occupancy raiyat having no transferable right sold the entire land of the tenancy to a stranger, and it is found that notwithstanding the sale he is in occupation of the homestead portion, which covers about one-tenth of the entire area, but has made no payment of rent to the landlord, there is ample indication of his intention to sever all connexion with the land as tenant under the landlord; and in these circumstances the landlord is clearly entitled to take up the position that there has been an abandonment.

—*Ishan v. Niki*—22 C.W.N. 853 following *Sailabala v. Sriram*—7 C.L.J. 303=11 C.W.N. 873: *Aminnessa v. Jinat*—19 C.W.N. 43=42 Cal. 751.

Add page 264, footnote 6:—Ishan v. Nishi—29 C.L.J. 1.

*Add page 274, para 1, last line, after "transaction"*⁵.

"The purchaser of a non-transferable occupancy holding cannot claim recognition by the landlord as a matter of right, but if he obtains recognition from the landlord, whether by payment or otherwise, then in the absence of special circumstances, he is *he is admitted to the origin l tenancy* with all its incidents and becomes the successor in interest of the vendor."

—*Abhoy v. Rajani*—29 C.L.J. 371=22 C.W.N. 904.

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