APPELLATE CIVIL.

Before Guha and Bartley JJ.

SHREESHCHANDRA GANGULI

v.

ESOM MUSALLI.*

1933

Aug. 8, 11

Agricultural Land—Homestead land—Erection of public place of worship, if permissible user—Ejectment—Bengal Tenancy Act (VIII of 1885), ss. 23, 25, 155.

The erection of a place of public worship (*e.g.*, a mosque) on land (either agricultural or homestead), comprised within a tenancy originally created for the purposes of agriculture, is not a species of user permissible under section 23 of the Bengal Tenancy Act.

Such permissible user must be user connected directly or ndirectly with the purposes for which the tenancy was originally created and attributable to the special needs of the tenant as an agriculturist.

Where such misuse is capable of remedy, the offending tenants are liable to be ejected from the holding in execution of a decree in the event of their non-compliance with the direction of the court in the matter of payment of compensation and of remedying the misuse of the holding.

Rajkishore Mondal v. *Rajani Kant Chuckerbutty* (1) and *Dhirendra Kumar Roy Choudhury* v. *Radha Charan Roy Choudhury* (2) referred to.

Hari Mohan Misser v. *Surendra Narayan Singh* (3) distinguished.

SECOND APPEAL by the plaintiff.

The facts of the case and the arguments advanced at the hearing of the appeal appear in the judgment.

Beereshwar Bagchi and *Nirodbandhu Ray* for the appellant.

Nasim Ali and *Farhat Ali* for the respondents.

Cur. adv. vult.

*Appeal from Appellate Decree, No. 1103 of 1931, against the decree of S. N. Guha Ray, Additional District Judge of Jessore, dated Nov. 17, 1930, reversing the decree of Shailendranath Mitra, First Munsif of Jhenidah, dated July 31, 1929.

(1) (1915) 37 Ind. Cas. 249.
(2) (1920) 57 Ind. Cas. 758.
(3) (1907) I. L. R. 34 Calc. 718; L. R. 34 I. A. 133.

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BARTLEY J. This appeal is directed against the decision of the learned Additional District Judge, Jessore, reversing the decision of the Munsif, 1st court, Jhenidah.

The case in the plaint was that defendants 1 to 4 in the suit held an agricultural *jamâ* of Rs. 7-8 carved out of an original *jamâ* of Rs. 18-8. This *jamâ* included a plot of homestead land, plot No. 1720, on which the defendants lived. They went to live elsewhere, and in 1334 B.S., erected a hut on the plot and allowed the Mahomedan public to use it as a mosque. Further, they attempted to collect money by subscription to build a *puccâ* mosque.

The suit was brought under section 25 of the Bengal Tenancy Act. In the first court, the substantial defences were that no notices under section 155, Bengal Tenancy Act, had been served on the defendants; that the suit was barred by waiver and acquiescence, as the landlord knew of, and assented to, the erection of the hut for the specific purpose indicated; that the plot, on which it stood, was homestead land; that by law, equity and custom, defendants were entitled to erect a mosque, and that there was no user rendering the land unfit for the purposes of the tenancy. The Munsif decreed the suit against defendants Nos. 1 to 4. The decree directed the removal of the hut, gave nominal damages of one pice to the plaintiff, and directed *khâs* possession on default. Further defendants 1 to 4 were

permanently restrained from allowing the public to acquire any right on and from erecting or allowing any one else to erect either a *kutchâ* or a *puccâ jummâ ghar* or mosque on the plaint lands.

On appeal, the learned Additional District Judge held, in agreement with the lower court, that there had been a proper service of notices on the defendants, that the suit was not barred, that the original tenancy was an agricultural tenancy, that the plot,

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on which the hut stood, was a plot used as homestead land and comprised in the tenancy, and that the hut was a public mosque, erected.

> with the obvious intent of using it for prayer as well as allowing neighbours of the same community to flock there and say their prayers there.

On these findings, he came to the conclusion that such user did not hamper, in any way, the purposes of the tenancy, and consequently constituted no ground for ejectment under section 25 of the Bengal Tenancy Act.

The short point, therefore, for decision in this appeal is whether, on the facts found, the tenant has used the land in a manner, which renders it unfit for the purposes of the tenancy.

On full consideration of the question, we are constrained to take the view that the answer must be in the affirmative.

We are unable to hold that the erection of a place of public worship on land comprised within a tenancy originally created for the purposes of agriculture is a species of user permissible under section 23 of the Bengal Tenancy Act.

In our view such permissible user must be user connected directly or indirectly with the purposes, for which the tenancy was originally created, and attributable to the special needs of the tenant as an agriculturist. We do not think it can be said that the erection of an edifice intended for public worship, whether such edifice is constructed on homestead or on agricultural land, can be held to be such user.

As indicated in *Rajkishore Mondal* v. *Rajani Kant Chuckerbutty* (1), one of the tests to be applied in such a case is whether the purpose, for which the land is used, is or is not one totally unconnected with agriculture, and on the facts here found there can be no doubt that there is no such connexion.

(1) (1915) 37 Ind. Cas. 249.

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In *Dhirendra Kumar Roy Choudhury* v. *Radha Charan Roy Choudhury* (1), it was held that the construction of a cremation *ghât* on an occupancy holding rendered it unfit for the purposes of agriculture, and, even if it be conceded that in the present case the plot was *bâstu* land, used, before it was abandoned, as the dwelling house of the *râiyat*, it cannot, we think, be maintained that the erection of a place of public worship on the site does not make it unfit for the purpose, for which it was originally intended and used.

Our attention has been drawn, on behalf of the respondent, to the case reported in *Hari Mohan Misser* v. *Surendra Narayan Singh* (2).

In that case, however, it was distinctly found that the erection of the buildings in question was in conformity with the purposes, for which an agricultural holding was let.

We are, therefore, of opinion that on a correct application of the principles, which emerge from a consideration of the law and of the reported cases, the decision arrived at by the learned Additional Judge cannot be supported.

It follows that the plaintiff appellant is entitled to a decree in accordance with the provisions of section 155, Bengal Tenancy Act.

The decree passed by the Munsif is not, however, in strict accordance with the provisions of that section, nor is an injunction, by which the defendants are permanently restrained from allowing the public to acquire any right on the plaint lands, a valid form of prohibition.

The result of the conclusions arrived at by us, therefore, is that the appeal is allowed, the decision of the court of appeal below, dismissing the plaintiff's suit, is set aside, and a decree is passed in favour of the plaintiff in accordance with the provisions of section 155 of the Bengal Tenancy Act. The

(1) (1920) 57 Ind. Cas. 758.

(2) (1907) I. L. R. 34 Calc. 718; L. R. 34 I. A. 133.

plaintiff's suit is decreed against the defendants Nos. 1 to 4. They are to pay to the plaintiff the amount of Rs. 100 as compensation for misuse of the lands appertaining to the agricultural holding in suit. The misuse is capable of remedy; and the defendants are liable to be ejected from the holding in execution of this decree in the event of their non-compliance with the directions of this Court in the matter of payment of compensation mentioned above, and of remedying the misuse of the holding—such misuse consisting in using plot No. 1720, mentioned in the plaint, as a place of public worship, and raising a structure on the same, which is used, or is meant to be used, as a public place of worship (a mosque)—within two months from this date. As mentioned in the judgment of the trial court, the plaintiff's suit is dismissed as against the defendants Nos. 5 to 10.

The parties are to bear their own costs in the litigation throughout.

The records of the case are to be returned as soon as practicable.

GUHA J. I agree.

Appeal allowed.

G. S.