## LETTERS PATENT APPEAL.

*Before Rankin C. J. and C. C. Ghose J.*

KAMALKRISHNA SANYAL

*v.*

MADHUSUDAN CHAUDHURI.*

1929

*Mar.* 28.

*Landlord and tenant—Trees—Landlord's rights over trees growing on tenant's* mourasi mokarrari jote*—Bengal Tenancy Act (VIII of 1885), as amended by Beng. Act IV of 1928, s. 23.*

A landlord is not entitled to enter upon the holding of his tenant and cut down trees there without the tenant's consent.

*Abdool Rohoman* v. *Dataram Bashee* (1) and *Ruttonji Edulji Shet* v. *The Collector of Tanna* (2) discussed and distinguished.

*Ganga Dei* v. *Badam* (3) followed.

*Nafar Chandra Pal Chowdhuri* v. *Ramlal Pal* (4) and *Pradyote Kumar Tagore* v. *Gopi Krishna Mandal* (5) referred to.

LETTERS PATENT APPEAL by the defendants.

The facts, out of which this appeal arose, are as follows: The defendants had unlawfully entered on the land of the plaintiff, who was their tenant, and felled a *mohua* tree which stood there. The tenant's interest in the land was a *mourasi mokarrari jote.* Before the Second Munsif at Malda, who originally tried the suit, two defences were taken, *viz.*, the plaintiff had (*a*) no *mourasi mokarrari jote* right in the lands and (*b*) no right whatever in the tree. The learned Munsif upheld the first ground of defence, but negatived the second and decreed the plaintiff's suit for Rs. 40.

An appeal was preferred against this decision before the Additional Subordinate Judge of Rajshahi, who affirmed the same. A Second Appeal was then taken to the High Court by the defendants. Mr. Justice Mitter, who heard this appeal, upheld the decision of the lower courts and dismissed the appeal with costs. Against this decision, the defendant-appellants took this present Letters Patent Appeal.

*Letters Patent Appeal, No. 84 of 1928, in Appeal from Appellate Decree No. 1005 of 1927.

(1) (1864) W. R. Gap. Vol. 367.
(2) (1867) 11 M. I. A. 296.
(3) (1908) I. L. R. 30 All. 134.
(4) (1894) I. L. R. 22 Calc. 742.
(5) (1910) I. L. R. 37 Calc. 322.

*Mr. Jatindramohan Chaudhuri*, for the appellants.

*Mr. Krishnakamal Maitra*, for the respondents.

RANKIN C. J. This is a Letters Patent Appeal from the concurrent decision of three courts, in a suit by the tenant, who is an occupancy holder, against the landlords for damages for the landlords' wrongful act in coming upon the holding and cutting down a certain tree. The tree appears to be a *mohua* tree from which a certain form of crude alcohol can be made. Now, the tree, when cut down, was appropriated by the tenant and the present appellants—the landlords have succeeded in a suit in which they have recovered Rs. 40 as damages against the tenant for wrongful conversion of the timber. The present appeal is an appeal by the landlords in which they seek to have it established that they were entitled to enter upon the holding of the tenant and cut down this tree without the tenant's consent. As I have said, the Munsif, the Subordinate Judge and the learned Judge of this Court in Second Appeal have unanimously negatived that contention. In my opinion, on a review of the authorities and on principle, they are clearly right.

The first principle in these matters is that the *primâ facie* right in the land and in trees, which are let along with the land, is in the *zemindar* and the second principle is that, when the *zemindar* settles a tenant on the land, that tenant gets certain rights not only in the land but also in the trees which go with the land. If one looks to section 23 of the Bengal Tenancy Act, one will find that, by virtue of special legislation applicable to agrarian holdings in this province, the enjoyment of this tenancy includes, in the case of a *raiyat* who has a right of occupancy, a right to use the land in any manner which does not materially impair the value of the land or render it unfit for the purposes of the tenancy, subject to this restriction that the tenant shall not be entitled to cut down trees in contravention of any local custom. From that section, it would appear that the right of

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enjoyment which a tenant of the present character, that is, the respondent now before us, has in his land is a right to have a certain limited use of the trees including the right under certain restrictions to cut them down. Whether or not there ever was a time at which it could be said that a tenant of this sort had no right to cut down trees at all, it is clear from section 23 that the position has now changed. We are not, however, concerned in this case with the tenant's right to cut down trees; we are concerned with the landlords' right to enter upon the holding and cut down trees without the consent of the tenant. As regards that matter, the oldest authority which need be consulted is, I think, the case of *Abdool Rohoman* v. *Dataram Bashee* (1). The law, as declared in that case, is reasonably clear. It is said there that the tenant has a right to enjoy all the benefits that the growing timber may afford him during his occupancy; but it goes on to say and it was no doubt true in that case that he has no power to cut the trees down and to convert the timber to his own use. The latter part of that clause is, broadly speaking, still true, though it may be modified by local custom. Apart, however, from the judgment, as regards the right of the *zemindar* to the trees, it was held that the tenant has a right to enjoy all the benefits that the growing timber may afford him during his occupancy; and, in that case, the claim of the landlord was to have his title in the growing trees declared and to obtain a declaration that the pretensions of the *raiyat* were not legal. There was no claim, therefore, of the landlord to enter upon the holding and to cut the trees down. It is quite clear that any such claim would be inconsistent with the principle upon which the judgment was based. In the case of *Ganga Dei* v. *Badam* (2), this very question arose. In that case, it appears that the landlady instituted a suit for declaration of her title to the trees. She also prayed for a perpetual injunction restraining the tenants from offering any

(1) (1864) W. R. Gap. Vol. 367. (2) (1908) I. L. R. 30 All. 134.

obstruction to the cutting down and removal by her of the trees on the holding. As regards the claim for injunction, it will be seen that it raised the same point as in the present case. The plaintiff landlord wanted the tenants to be restrained from resisting her when she came upon the tenant's land to cut down trees. Curiously enough, the first court accepted that contention. But when the case went to the Allahabad High Court, Mr. Justice Richards dissolved that injunction. The learned Judges of the Division Bench upheld that decision saying that "the "presumption of law, and the general rule in the "absence of custom is that the property in timber on "a tenant's holding vests in the *zemindar*, and that "the tenant has no right to cut and remove such "timber. But it appears to us to be clear that in "the absence of a custom or of a contract to the con-"trary a *zemindar* has no right to interfere with the "enjoyment by his tenant of the trees upon his "holding as long as the relation of landlord and "tenant subsists. A tenant has a right to enjoy all "the benefits of the growing timber on his land "during his occupancy. If the *zemindar* desire to "have the privilege during a tenancy of entering upon "his tenant's holding and cutting down and removing "timber, he must procure a special stipulation from "his tenant in that behalf." It seems to me that, in the other cases which have been cited to us, there is no law laid down to the contrary. We have been referred to the case of *Nafar Chandra Pal Chowdhuri* v. *Ram Lal Pal* (1), where the real question was as to the person entitled to the felled timber and the same is true of the case of *Pradyote Kumar Tagore* v. *Gopi Krishna Mandal* (2). There is only one case, in all the long line of cases, which seems to me even to suggest that because the landlord has general proprietary right in the timber, he is entitled to exercise his right by cutting it down after the land has been settled with the tenant. That case, however, in no way bears out the contention. I

(1) (1894) I. L. R. 22 Calc. 742. (2) (1910) I. L. R. 37 Calc. 322.

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propose to refer to it. It is the case of *Ruttonji Edulji Shet* v. *The Collector of Tanna* (1). In that case, the Court was construing a farming lease of certain jungle lands which had been granted by the Government. The question arose as to whether, on a certain part of the land, the rights granted to the lessee included the right to fell and take away timber. Dealing, therefore, with this question, which was as to the tenant's right to cut trees, the argument of their Lordships was as follows: They pointed out that before the lease was granted, the whole right was in the Government. They went on to say that, if the tenant claimed to have the right to fell trees, he must do it either by showing that that right was a necessary incident of the lease by reason of the objects of the lease or that he had got it under some positive law or under some custom to be incorporated in the lease or under the express terms of the lease. Now, it is the passage upon which their Lordships' reasoning is founded which has given rise, it would seem, to some misapprehension. The passage is this: "At the time, then, that this lease was "made, the whole of the land, and all the rights "connected with the land, subject to such claims as "third parties might have upon it, belonged to the "Government. The trees upon the land were part "of the land, and the right to cut down and sell those "trees was incident to the proprietorship of the "land." So it was "at the time that the lease was "made." This proposition is no authority for the view that a landlord, after he has leased out the land, can come upon the holding of his tenant and cut down trees without the consent of the tenant. In my judgment, the learned Judge has very correctly appreciated the state of the law. In that view, the appeal fails and must be dismissed with costs.

GHOSE J. I agree.

*Appeal dismissed.*

O. U. A.

(1) (1867) 11 M. I. A. 296.