APPELLATE CIVIL.

Before Guha and Bartley JJ.

1934

Dec. 11. 13.

AKSHAYKUMAR SHAHA

v.

KAMINIKUMAR SHAHA.*

Improvement—Occupancy râiyat—*Landlords' property not diminished—"Out-offices"—Bengal Tenancy Act (VIII of 1885), s. 76* (2) (f).

The erection of a dwelling house, suitable to the requirements of the tenants having rights of occupancy in them, has always been considered to be within their rights; and the erection of a dwelling house, whether of masonry, bricks, stone or any other material whatsoever, for the tenant and his family, together with all necessary out-offices, has now been recognised as an "improvement" as contemplated by the Bengal Tenancy Act [section 76 (2) (*f*)].

The word "out-offices" used in section 76(2) (*f*) is not sufficiently clear and comprehensive in the matter of the intention of the legislature; and the clauses, which specify what constitutes improvements within the meaning of section 76 of the Bengal Tenancy Act, cannot be taken to be exhaustive.

Where a *mantop*, or *puccâ* place of family worship in a dwelling house, had been used for a very long time (and was intended to be used) by the tenants and their family only, and it had not been found to be a structure or work executed by the tenants, which had in any way diminished the landlords' property,

held that it must be taken to be an appurtenance to the house itself and cannot but be considered to be an improvement as contemplated by the statutory provisions referred to above.

Nyamutoollah Ostugur v. *Gobind Churn Dutt* (1) referred to.

SECOND APPEAL by the plaintiff.

The facts of the case and the arguments in the appeal appear sufficiently in the judgment.

Atulchandra Gupta, *Bhagirathchandra Das* and *Jnanchandra Ray* for the appellant.

Saratchandra Basak, Government Pleader, and *Jogeshchandra Singha* for the respondents.

Cur. adv. vult.

*Appeal from Appellate Decree, No. 214 of 1932, against the decree of Jitendrakumar Basu, Third Subordinate Judge of Mymensingh, dated July 31, 1931, affirming the decree of Abdul Wahab, Third Munsif of Tangail, dated Nov. 29, 1930.

(1) (1866) 6 W. R. (Act X) 40.

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GUHA J. The plaintiff in the suit, in which this appeal has arisen, prayed for relief by way of permanent injunction in the matter of a masonry structure described as *mantop*, and for a declaration of his right to demolish the same in case the brick-built structure of a permanent nature were completed during the pendency of the litigation. The case of the plaintiff before the court was that the defendants were tenants at will, and had no right to have a permanent *puccâ* structure in their homestead. The claim of the plaintiffs in the suit was resisted by the defendants, who asserted that they were *râiyats* with rights of occupancy, and were under the law entitled to build a permanent *puccâ mantop* on their homestead, as a part of their dwelling house.

According to the finding arrived at by the courts below, the defendants were occupancy *râiyats*, and a *mantop* in the defendants' house has existed for several generations. The *mantop* was formerly roofed with corrugated iron sheets and had *puccâ* plinth. The defendants were now, "after pulling down the old *mantop* erecting a pucca *mantop* with bricks on the old site". The question before the court below, on the finding arrived at by it, was whether the defendant had any right to erect a *puccâ* structure like the building under construction; could the structure be called an improvement within the meaning of section 76 (*2*) (*f*) of the Bengal Tenancy Act.

There can be no question that the structure sought to be raised, and which had almost been completed at the time when the case was pending before the court of appeal below, was an appurtenance of the dwelling house of the defendants. The *mantop* was in existence for a very long time, as a house for performing the annual *pujâs* performed by orthodox Hindus having faith in the religion of their forefathers and in the forms of worship practised by them, and having also sufficient means and the inclination to perform them. The

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erection of a dwelling house, suitable to the requirements of the tenants having rights of occupancy in them, has always been considered to be within their rights; and the erection of a dwelling house whether of masonry, bricks, stone or any other material, whatsoever, for the tenant and his family, together with all necessary out-offices, has now been recognised as an "improvement" as contemplated by the Bengal Tenancy Act [section 76(*2*)(*f*)]. The question then arises whether a particular structure or any work executed by the tenant of a holding substantially diminishes the value of his landlord's property [section 76(*3*)]. This latter provision, contained in the Bengal Tenancy Act, was recognised on the principle that "every man possessed of a right to hold the land "permanently—that is, of a right of occupancy,— "can do what he likes with the land, so long as he "does not injure it to the landlord's detriment": see in this connection *Nyamutoollah Ostagur* v. *Gobind Churn Dutt* (1). The word "out-offices" used in section 76(*2*)(*f*) is not sufficiently clear and comprehensive in the matter of the intention of the legislature; and the clauses, which specify what constitutes improvements within the meaning of section 76 of the Bengal Tenancy Act, cannot be taken to be exhaustive. On the footing that a place of worship in a dwelling house—used and intended to be used by the tenants and their family—must be taken to be an appurtenance to the house itself, that it has been treated as such for a very long time, and that it has not been found to be a structure or work executed by the tenants, which has in any way diminished the value of the landlord's property, it cannot but be considered to be an improvement as contemplated by the statutory provisions referred to above. The position would no doubt have been different, if it could be established, which has not been done in the case before us, that the *mantop* was intended to be a temple for the defendants and their neighbours, and was not going to be treated as a part of their dwelling

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house, or that the *mantop* was being constructed for the purpose of worship of gods not by the defendants only, but by others as well.

The result of the conclusion, we have arrived at as mentioned above, is that the decision of the court of appeal below must be upheld for the reasons stated above.

The appeal is dismissed with costs.

BARTLEY J. I agree.

Appeal dismissed.

G.S.