APPELLATE CIVIL.

Before Mr. Justice Wallace and Mr. Justice Srinivasa Ayyangar.

1928, January 24.

P. NARAYANA RAO (DEFENDANT), APPELLANT,

v.

ZAMINDAR OF MUKTYALA ESTATE (PLAINTIFF), RESPONDENT.*

Madras Estates Land Act (I of 1908), sec. 151—Tenant erecting a house and compound in a substantial portion of his agricultural holding—Liability to eviction by landlord.

Where a ryot put up a residential house and a compound therefor in a substantial portion of his holding, viz., in one acre out of two and one-third acres of land held by him, *held* that the ryot was guilty of diversion of the land from agricultural purposes and was liable to be ejected by the landholder under section 151 of the Madras Estates Land Act (I of 1908).

Obiter.—It is only a diversion already effected that brings about a forfeiture of the holding under the section and not a mere possibility or even the certainty of a diversion though in the near future.

APPEAL under clause 15 of the Letters Patent from the decision of PHILLIPS, J., in Second Appeal No. 1867 of 1923, preferred against the decree in Appeal No. 119 of 1922 of the District Court of Kistna filed against the decree of the Additional Deputy Collector of Bezwada in S. S. No. 439 of 1921.

The necessary facts appear from the judgment. Section 151 (1) of the Madras Estates Land Act is as follows:—

"A landholder may institute a suit before the Collector to eject an occupancy ryot from his holding only on the ground that the ryot has materially impaired the value of the holding

* Letters Patent Appeal No. 227 of 1925.

for agricultural purposes and rendered it substantially unfit for such purposes".

P. V. Rangaram for appellant.—It is only a small extent of land, viz., 2 cents out of a holding consisting of 14 acres of land that has been built upon. Even if we take the area covered by the compound it is only one acre. Under section 151 of the Estates Land Act it is only if the tenant had *already* materially impaired the value of the holding for agricultural purposes and rendered it substantially unfit for such purposes that he can be ejected by the landlord and not if there is a mere likelihood of such future injury. Even if we take the fifth defendant's portion of the holding alone into consideration he has utilized for building purposes only one acre out of two and one-third acres; and the finding of both the lower Courts is that it has not materially impaired the value of the holding for agricultural purposes. This is a finding of fact which has been wrongly interfered with by the learned Judge in second appeal, *Hari Moan Miser* v. *Surendra Narain Singh*(1).

A. Krishnaswami Ayyar (with *A. Venkatachalam*) for the respondent, contended that on the evidence, so far as the appellant, 5th defendant, was concerned, he had actually built upon a substantial portion, viz., one acre out of two and one-third acres of his holding and had thus done the mischief contemplated by section 151.

The JUDGMENT of the Court was delivered by

SRINIVASA AYYANGAR, J.—This is a Letters Patent Appeal from the judgment of Mr. Justice PHILLIPS sitting as a single Judge in S.A. No. 1867 of 1923. The plaintiff was the appellant in the second appeal and the suit from which it arose was instituted by him for ejecting the defendants from the holdings under the terms of section 151 of the Estates Land Act. Defendants 1 to 4 were occupancy ryots who had entered into engagements with the plaintiff landholder. The other defendants were in possession of various pieces and parts of the suit-holding under sales effected by defendants 1 to 4. These alienations by the ryots had not been recognized by the landholder under the

(1) (1907) I.L.R., 34 Calc., 718.

NARAYANA RAO v. ZAMINDAR OF MUKTYALA ESTATE.

SRINIVASA AYYANGAR, J.

terms of the Act. The allegations on which the plaintiff came into Court claiming to be entitled to eject the defendants were that the entire holding had been parcelled out by defendants 1 to 4 and alienated to various sets of defendants for building purposes and that the 5th defendant had put up on the portion of the land in his possession a substantial structure for purposes of residence and that thereby the occupancy ryots had materially impaired the value of the holding for agricultural purposes and rendered it substantially unfit for such purposes within the meaning of the said section. Both the lower Courts came to the conclusion that the buildings put up and the acts done by the defendants were not really calculated to impair the value of the holding or render it substantially unfit for agricultural purposes, but on the other hand were really in the nature of improvements as defined by the Act, improvements suitable to the holding and consistent with the character of the holding. On these findings the lower Courts concurred in dismissing the plaintiff's action. It was from that decision that the plaintiff filed the second appeal. The learned Judge on hearing the second appeal came to the conclusion that by the mere act of alienation by defendants 1 to 4, the occupancy ryots, they materially impaired the value of the holding for agricultural purposes and rendered it substantially unfit for such purposes. The learned Judge took the view that, as on the evidence the land was sold for building purposes, defendants 1 to 4 disabled themselves from thereafter objecting to buildings being raised on the pieces of land sold by them and that therefore as there was the certainty of the land being built upon for residential purposes, the mischief must be deemed to have been caused within the contemplation of section 151. But it must be observed that what that section

provides is that what has been done must have already materially impaired the value of the holding and rendered it already substantially unfit. Both the verbs are used in the past tense. The mere possibility of the land or even the certainty of the land being built upon and after being so built upon becoming unfit for agricultural purposes would in our judgment not be sufficient to bring in the operation of section 151. We should have felt bound to give effect to this view and allowed this Letters Patent Appeal, but having regard to the fact that the question to be considered with regard to this section was of a limited scope, we required both parties to address us on the evidence in the case so as to enable us to come to a conclusion whether what has been done or alleged to be done was sufficient to give the right to the plaintiff to seek to eject the defendants. The whole of the evidence on the record has been read to us. It must, in this connexion, be observed that the only appellant before us is the 5th defendant. He is not one of the occupancy ryots who had entered into an engagement with the landholder. As the alienation in his favour has not been recognized, it follows that the plaintiff was entitled to treat defendants 1 to 4 as being still his tenants. The other defendants had been made parties to the action merely because they were in actual possession of the various pieces of land. If the question was whether what had been done by the defendants amounted to a rendering of the entire holding consisting of 14 acres and odd unfit for agricultural purposes, then it might have been more difficult for determination than it has actually turned out to be. As none of the other defendants have filed any appeal, we are at present concerned only with the extent of the land about $2\frac{1}{3}$ acres or so in the possession of the appellant, 5th defendant, and the question with

NARAYANA RAO v. ZAMINDAR OF MUKTYALA ESTATE. — SRINIVASA AYYANGAR, J.

reference to him is whether what he has done in respect of the land amounts or not, to use a general expression, to a diversion of the land from agricultural purposes. We use that expression deliberately, because taking the whole of section 151, the principle that seems to underlie that section is that when a holding is in the possession of a tenant he holds it on the terms agreed to or settled between the parties only for agricultural purposes and that as such tenant he is not at liberty to divert the land from the main purpose of the holding, namely, the agricultural purpose and any such diversion, it is provided, will entail a forfeiture whereupon the landholder might sue the tenant in ejectment. As the transfer in favour of the 5th defendant has not been recognized for the purpose of this appeal, we must take it that what has been done by him admittedly must have been permitted or done by defendants 1 to 4, for purposes of determining the question of forfeiture. Taking it to be so, then the question is merely whether putting up a building that has been admittedly put on there and enclosing a portion of the land round with a fence so as to form a compound for this building has or has not had the effect of diverting the land from agricultural purposes. It is significant that the only witness that has been called for the defence, the 8th defendant in the case, has clearly admitted that the purchases by the defendants were for building purposes. He was himself one of the purchasers. The 5th defendant has not gone into the box. No other evidence has been called. It is admitted that the extent of the land enclosed as a compound round the building is about 1 acre and it is really a very substantial portion of $2\frac{1}{3}$ acres, the entire extent of the piece of land in question. It is also noteworthy that section 151 includes a proviso of the land being substantially rendered unfit. It was

argued by the learned vakil for the appellant very strenuously that merely putting up a building on about 2 cents of the land cannot possibly be regarded as diverting the land from agricultural purposes. We do not think it is possible to seek to define in any meticulous manner what would amount to a diversion and what would not. That depends upon not only the extent of the building but the purposes which it is intended to serve the object with which it is built and the various measures that are taken in respect of the land. Taking the whole thing into consideration, it is clear from the admissions made and the evidence recorded that the direct object of the 5th defendant in putting up the building was to use the building for residential purposes, and we are therefore of opinion that what has been done by the 5th defendant is substantially to divert the land from agricultural purposes. It is impossible to say that when out of a plot of land measuring $2\frac{1}{3}$ acres a house is built and a compound is created for residential purposes there is no such diversion. As therefore on the facts of the case we have come to the conclusion that the building put up and the acts done by the 5th defendant do constitute a diversion of the land from agricultural purpose as provided for in section 151, we are satisfied that so far at least as the appeal is concerned the conditions have been satisfied on which under that section the landholder becomes entitled to file a suit in ejectment. In this view therefore we are satisfied that the decree passed by the learned Judge from whose judgment this Letters Patent Appeal has been filed can be justified. The Letters Patent Appeal is therefore dismissed with costs.

N.R.