1871

JARDINE v. TARINI MOHAN SEN.

Mr. *Ghose* for the appellant.—The Judge delivered his judgment without hearing the reply. He was bound to hear the appellant's pleader before deciding against him. [JACKSON, J.—The Civil Procedure Code does not expressly say that you are entitled to be heard in reply as a matter of right.] The practice of all the English Courts is in favor of my contention, and it is a well-known rule of practice that the Judge must hear the appellant's reply if the respondent has satisfied him that the decision appealed from is correct. The certificate of the pleaders in the case showed under what circumstances the appellant's pleader was not heard in reply. It is impossible to say that the reply would not have made some impression on the Judge's mind favourable to the appellant, having regard to the circumstances of the case.

Baboo *Kali Mohan Das* for the respondent said that the vakeel for the appellant did not insist on being heard. It was his duty to do so. The certificate therefore does not go far enough.

The judgment was delivered by

COUCH, C.J.—On the ground stated in the 6th ground of the memorandum of appeal, the decree of the lower Appellate Court is set aside, and the case sent down to that Court for re-trial. The costs of this Court will be dealt with by the lower Court as costs in the cause.

Before Mr. Justice Bayley and Mr. Justice Ainslie.

L. G. CROWDEE (DEFENDANT, No. 1) *v.* BHEKDHARI SING AND OTHERS (PLAINTIFFS)*

1871
June. 9.

Ijmali Lands—Growing of Indigo—Co-sharers, Rights of.

See also 12 B.L.R.191

Several persons jointly held lands which were not divided by metes and bounds but in specified shares. One of the shareholders leased out his share or interest in the lands. The lessee sowed indigo in the joint lands. The other shareholders brought a suit to restrain the lessee of their co-sharer from growing indigo on the lands.

Held, that a co-sharer cannot use ijmali lands so as to alter the condition of the property as regards the other shareholders without their consent; that indigo as a crop being valueless for purposes of distraint, the lessee must be restrained from growing it without the consent of all the proprietors.

Baboos *Nilmadhab Sen* and *Khettranath Bose* for the appellant.

Baboo *Chandra Madhab Ghose* for the respondents.

THE facts of this case and the arguments are sufficiently stated in the judgment of the Court which was delivered by

*Special Appeal, No. 320 of 1871, from a decree of the Subordinate Judge of Bhagulpore, dated the 8th February 1871, modifying a decree of the Moonsiff of that district, dated the 28th November 1870.

(1) See *Sadabat Prasad Sahu* v. *Foolbash Koer*, 3 B. L. R., F. B., 31.

1871

L.G. CROWDBE v. BHEKDHARI SING.

AINSLIE, J.—In this case the plaintiff sues to restrain the defendant from growing indigo on lands which are the khodkast lands of the plaintiff, and on lands which are the ijmali ryotti lands of all the joint proprietors in the village, which, the plaintiff alleges, the defendant had attempted to cultivate by force. The plaintiff states his share to be 2 annas 15 gandas in the whole village.

The defendant holds a lease of 1-anna 2 pie from one shareholder, and 3 annas 17½ gandas from another shareholder, in all a little more than 5 annas.

The first Court gave a decree to the plaintiff.

The lower Appellate Court has ordered a remand with a view to ascertain precisely what lands the plaintiff alleged to be khodkast and what lands he alleged to be ijmali.

In special appeal it is contended that the suit ought not to have been entertained, as no relief could be granted to the plaintiff without depriving the defendant of his just rights in the ijmali lands, and that the special appellant was perfectly entitled to use and enjoy the shares of the lands leased to him in any way that suited him best; further that, if the cultivation of indigo appeared profitable to him, he could not be restrained from growing it on the land by the other co-sharers; and that, if any injury arises to the other co-sharers, they have their proper remedy by an action for damages. If no immediate injury were likely to arise from the cultivation of the ijmali lands with indigo, it would probably be advisable to leave the plaintiff to the remedy suggested, but it appears to us that there is an immediate injury in this way, that the produce of the lands is hypothecated for the rent; and if the lands are cultivated with crops that are ordinarily grown upon them, those crops are such as the shareholders, if they have occasion to resort to the process of distraint for a realization of their rent, may profitably attach; but if, in lieu of such ordinary crops, the crop of indigo be substituted, that crop becomes perfectly valueless to all but the particular persons who have the means of converting the plants into the manufactured article. In the case of *Gurudas Dhur* v. *Bijari Gabind Boral* (1), it was held by Mr. Justice L. S. Jackson as

(1) *Before Mr. Justice L. S. Jackson and Mr. Justice Glover.*

The 16th July 1868.

GURUDAS DHUR AND OTHERS (DEFENDANTS) *v.* BIJAI GABIND BORAL AND OTHERS (PLAINTIFFS).*

Baboo *Rajendra Nath Rose* for the appellants.

Baboo *Bhagabäti Charan Ghose* for the respondents.

JACKSON, J.—We think that the decision of the lower appellate Court in this case is quite correct.

A co-sharer in landed property has no right to do anything which alters the condition of the joint property, without the consent of his co-sharers. If he thinks his interest in the property might be improved by works of a particular character, he can effect a partition and improve his particular share.

It seems in this case the plaintiff interposed when the defendant commenced the infringement of his (plaintiff's) rights. The suit was reasonable, and the Judge was quite right to order the removal of the materials of the building itself as far as it had gone.

The special appeal is dismissed with costs.

*Special Appeal, No. 287 of 1868, from a decree of the Judge of Moorshedabad, dated the 29th November 1867, reversing a decree of the Moonsiff of that district, dated the 20th July 1867.