

P.C.\*  
1907

May 3, 15.

HARI MOHAN MISSER

v.

SURENDRA NARAYAN SINGH.

[On Appeal from the High Court at Fort William in Bengal.]

*Landlord and Tenant—Land let for agricultural purposes—Indigo-factory on land let for cultivation—Bengal Tenancy Act (VIII of 1885) s. 23—Use of land consistent or not with purposes of tenancy—Second appeal, power in, to deal with findings as to whether erection of building impairs value of land or renders it unfit for cultivation.*

An occupancy tenant can under section 23 of the Bengal Tenancy Act (VIII of 1885) "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."

In a suit for an injunction to restrain the building of an indigo-factory on land let for agricultural purposes generally: *Held*, that the question whether such a building conforms to the restrictions in section 23 must be considered with reference to the circumstances of each individual case, the size of the holding and of the area withdrawn from actual cultivation by the erection of the building, and the effect of such withdrawal upon the fitness of the holding, as a whole, for profitable cultivation.

In this case, the District Judge (reversing the decision of the Subordinate Judge) found that the erection of the building did not impair the value of the land, and was in conformity with the purposes for which an agricultural holding is let, and dismissed the suit:—

*Held*, that the High Court was not justified, on second appeal, in overruling those findings and laying down a broad rule to the contrary without any regard to the above consideration.

APPEAL from a decree (June 1st 1903) of the High Court at Calcutta which reversed a decree (August 16th 1900) of the Court of the District Judge of Purnea, and restored a decree (September 30th 1899) of the Subordinate Judge of Purnea.

The defendants were the appellants to His Majesty in Council.

The suit was brought by the present respondent and the main question raised on this appeal was whether the respondent was entitled to a perpetual injunction restraining the appellants from

\* *Present*: LORD ROBERTSON, LORD COLLINS AND SIR ARTHUR WILSON.

erecting certain buildings on a plot of land in the village of Badh Manoharpur. The decision of that question depended on whether the manufacture of indigo was an agricultural purpose, and if not, whether the erection of an indigo factory on land leased for agricultural purposes made the land unfit for the purposes of the tenancy.

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The facts of the case are sufficiently stated in the report of the case before the High Court, *Surendra Narain Singh v. Hari Mohan Misser*, I. L. R. 31 Calc. 174.

In the plaint the suit was valued only at Rs. 1,500, and that was the valuation which appellants adopted on their appeal to the District Judge. But in applying for leave to appeal to the Privy Council they put in an affidavit to show that the subject-matter of the suit was over Rs. 10,000. The application was opposed but the High Court (SIR FRANCIS MACLEAN C.J., and HILL and STEVENS JJ.) held that the defendants were not precluded from showing what the real or market value of the subject-matter of the suit was, and granted the application to appeal: see *Hari Mohan Misser v. Surendra Narain Singh* (1).

On this appeal

*L. De Gruyther*, for the appellants, contended that an occupancy tenant was entitled to erect buildings upon land let for an agricultural purpose provided they did not render the land unfit for the purposes of the tenancy or materially impair the value of the land. The Bengal Tenancy Act (VIII of 1885) sections 19, 23, 26, 29, 178 and 183 were referred to. It could hardly be contended that the erection of a valuable building, as in this case, impaired the value of the land. Nor did the building erected unfit the land for cultivation. No doubt the land on which the building was erected could not be cultivated, but unless such a building was erected the land was of no use for the purposes of the tenant. Reference was made to *Nyamutoollah Ostagur v. Gobind Churn Dutt* (2) and the Bengal Tenancy Act sections 76, 77, 78 as showing that there was no doubt an occupancy tenant could build on the land. Building a house for the manufacture of indigo did not materially impair the value of the land; nor did it render the

(1) (1903) I. L. R. 31 Calc. 301.

(2) (1866) 6 W. R. (Act X) 40.

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land as a whole unfit for cultivation. If it did, the proper remedy of the landlord was to eject the tenant: see section 25 of the Bengal Tenancy Act. The building was erected with the consent of the co-sharers, and without any objection from the other sharers: the suit should therefore be dismissed as being not maintainable.

The injunction which had been granted was too wide in its terms: the specific Relief Act (I of 1877) section 54 was referred to.

*C. W. Arathoon*, for the respondent, contended that the buildings erected on the land were wholly inconsistent with the purposes for which the land had been let, which was the cultivation, that is, the growing of indigo on the land. The manufacture of indigo cakes from the indigo plants was not an agricultural purpose. The Bengal Tenancy Act only applied to agricultural tenancies: section 76 was referred to. The use of the land must be "consistent with the purpose for which it was let." Was the building erected consistent with the agricultural purpose for which this land was let? It was submitted it was not. Reference was made to *Lal Sahoo v. Deo Narain Singh* (1), *Ramanadhan v. Zamindar of Ramnad* (2), *Venkayya v. Ramasami* (3), *Najju Khan v. Imtiazuddin* (4) and *Jugut Chunder Roy Chowdhry v. Eshan Chunder Banerjee* (5). The purpose of the tenancy therefore being the cultivation of crops, the erection of an indigo-factory on the land rendered it unfit for the purposes of the tenancy.

It was also contended that the appeal had been wrongly valued and was not properly before the Board. Reference was made to *Banarsi Prasad v. Kashi Krishna Narain* (6) and *Radha Krishn Das v. Rai Krishn Chand* (7); and it was submitted that a special certificate, in accordance with the decisions in those cases should have been given in this case: see sections 595, 596 of the Civil Procedure Code.

*De Gruyther*, in reply. As to the valuation of the appeal, the respondents were rightly allowed to show the real value of the

(1) (1878) I. L. R. 3 Calc. 781.

(5) (1875) 24 W. R. 220.

(2) (1893) I. L. R. 16 Mad. 407.

(6) (1900) I. L. R. 28 All. 227;

(3) (1898) I. L. R. 22 Mad. 39, 46.

L. R. 28 I. A. 11.

(4) (1895) I. L. R. 18 All. 115.

(7) (1901) I. L. R. 23 All. 415;

L. R. 28 I. A. 182.

subject-matter of the suit. The valuation in the plaint was only for the purposes of the Suits Valuation Act (VII of 1887), and section 7 clause 4 (d) of the Court Fees Act (VII of 1870).

On the question of the right to build on the land, section 82 of the Bengal Tenancy Act was referred to; and it was pointed out that the Madras cases cited were decided under a different Act, and were therefore not applicable.

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The judgment of their Lordships was delivered by

SIR ARTHUR WILSON. The respondent represents the owner of a ten-and-a-half-anna share in a putni tenure of considerable extent, Turuf Inaitpur Katakose, in the district of Purnea. The putni included amongst other properties a holding to which the present suit relates. This holding had become vested in Ram Kumar Singh, who, it is not disputed, held as an occupancy raiyat, enjoying as such the rights conferred upon a tenant of that class by the Bengal Tenancy Act (VIII of 1885). Ram Kumar Singh, in conjunction with some of the owners of shares in the putni, took steps for the purpose of growing indigo on the holding, and for the erection of an indigo factory within its limits.

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The suit out of which this appeal arises was brought in the Court of the Subordinate Judge of Purnea, by the owners of the ten-and-a-half-anna share in the putni, to obtain an injunction restraining the carrying out of the proposed changes. It is unnecessary to consider the constitution of the suit. It is enough to say that all necessary parties were joined, and that everything turns upon the rights of the ten-and-a-half-anna sharers in the putni on the one hand, and those of Ram Kumar Singh, the occupancy tenant of the holding, on the other.

The enactment governing the case is section 23 of the Bengal Tenancy Act which says :—

“ When a raiyat has a right of occupancy in respect of any land, he may 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.”

The Subordinate Judge granted the injunction asked for. The District Judge on appeal reversed that decision. As to the

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first of the two restrictions contained in the section his finding was explicit. He says :—

“ The building of a factory with necessary appliance for the manufacture of the plant near to or upon the land on which it is grown would be an operation decidedly for the benefit of the holding, and I fail to see how under any conceivable circumstances the value of the holding could deteriorate in consequence of the erection of such buildings.”

This is a clear finding of fact, which has not been and could not be questioned.

The second restriction in the section is that the user of the land must not be such as to render it unfit for the purposes of the tenancy. The question arising with regard to that restriction was essentially a question of fact, and the District Judge decided it ; but in doing so he may seem, perhaps, to have relied, not so much upon the circumstances of the case before him, as upon a proposition which, understood generally, might require qualification, for he says :—

“ I think it may be fairly held that the erection of indigo buildings is also in conformity with the purposes for which an agricultural holding is let.”

What their Lordships, however, have to decide is not whether the judgment of the District Judge was wholly satisfactory, but whether the learned Judges of the High Court were justified in overruling it, as they did, on second appeal.

Second appeals are governed, so far as the present case is concerned, by sections 584 (a) and 585 of the Civil Procedure Code, under which the appeal can only lie on the ground of the decision appealed against “ being contrary to some specified law or usage having the force of law.” The law which the High Court found to have been violated by the District Judge’s decision is thus stated :—

“ Where, as in this case, land has been let out for agricultural purposes generally, the erection of an indigo-factory on a part of such land must render it unfit for the purpose of the tenancy, because, the purpose of the tenancy being the cultivation of crops, that is agricultural purposes, the portion of the land built upon will evidently be unfit for such purposes.”

That proposition of law is laid down broadly, without reference to the circumstances of individual cases, without regard to the size of the holding, or of the area withdrawn from actual

cultivation, or to the effect of such withdrawal upon the fitness of the holding, taken as a whole, for profitable cultivation.

Their Lordships are unable to concur in the proposition of law so laid down. They will, therefore, humbly advise His Majesty that the judgment and decree of the High Court should be discharged with costs, and those of the District Judge restored. The respondent will pay the costs of this appeal.

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*Appeal allowed.*

Solicitors for the appellants: *T. L. Wilson & Co.*

Solicitors for the respondents: *Dallimore & Son.*

J. V. W.