APPELLATE CIVIL.

Before Mr. Justice Banerjee and Mr. Justice Pargiter.

1903
June 1.

SURENDRA NARAIN SINGH
v.
HARI MOHAN MISSER.*

Indigo—Manufacture of Indigo—Agricultural purpose—"Purposes of the tenancy"—Injunction—Specific Relief Act (I of 1877), s. 54, Illus. (k)—Bengal Tenancy Act (VIII of 1885), ss. 23, 25 (a), 183.

The manufacture of indigo cakes from indigo plants is not an agricultural purpose.

Where a land has been let out for agricultural purposes generally, the erection of an indigo factory on any part of such land renders it unfit for the "purposes of the tenancy," and the landlord is entitled to a permanent injunction restraining the tenant from erecting the factory.

SECOND APPEAL by the plaintiff, Surendra Narain Singh.

The plaintiff is the *putnidar* of 10½-anna share of Inayetpur Kantakoss in Pergana Kankjole, district Purneah, the defendants Nos. 1 to 3 (first party) and the *pro forma* defendants being the owners of the remaining 3½-anna and 2-anna shares respectively. In village Manoharpur, situate within the taluk, the defendant No. 6 owns a *kalhasili jote*, with a transferable right of occupancy. He entered into an agreement with the defendants Nos. 1 to 3 to build an indigo factory on a piece of land measuring 17 bighas 1 cotta and forming part of his said *jote*. The indigo factory was to be worked conjointly by the defendants Nos. 1 to 3 and 6. The said defendants having commenced to construct on the land vats and other structures for the manufacture and storage of indigo, and to make excavations for the purpose of making bricks, &c., the plaintiff instituted the present suit for a perpetual injunction to restrain them from doing so.

* Appeal from Appellate Decree No. 1780 of 1900, against the decree of F. MacBlaine, District Judge of Purneah, dated Aug. 16, 1900, reversing the decree of Chakradhar Prosad, Subordinate Judge of that district, dated Sept. 30, 1899.

The Subordinate Judge decreed the suit, holding that as the *jote* land in this case was originally let out for raising the crops generally raised and consumed in that part of the country, the holder of the *jote* had no right to convert it into an indigo factory without the consent of the owners. He further held that ss. 76 and 77 of the Bengal Tenancy Act did not contemplate the erection of indigo factories.

On appeal the District Judge held that as the growing of indigo was certainly agriculture, the manufacture of it on the spot must also be held to be an operation of a like character for the benefit of the holding, and that the erection of indigo buildings was in conformity with agricultural purposes. He accordingly allowed the appeal.

Dr. Rash Behary Ghose, *Babu Golap Chandra Sarkar* and *Babu Jogendra Nath Bose* for the appellant.

Mr. O'Kinealy and *Babu Jogesh Chandra Dey* for the respondents.

BANERJEE AND PARGITER JJ. In this appeal, which arises out of a suit brought by the plaintiff-appellant to obtain an injunction restraining the defendants from building an indigo factory on the land held by defendant No. 6 under the plaintiff, the question raised on behalf of the plaintiff-appellant is whether the learned Judge in the Court of Appeal below was right in holding that the manufacture of indigo was an agricultural purpose.

On the other hand, the learned counsel for the defendants-respondents contends that not only is the learned Judge below right in the view he has taken that the manufacture of indigo is an agricultural purpose, but that the conclusion he has arrived at, that the plaintiff's suit should be dismissed, is incapable of being interfered with in second appeal, because it is based upon the finding of fact that the defendants have done nothing in violation of the conditions of the tenancy; and he further contends that the suit is also liable to dismissal on the ground that a suit for injunction is not maintainable, where, if the plaintiff's contention be right, a

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more complete remedy by ejectment of the tenant defendant was obtainable.

Upon these contentions the questions that arise for consideration are, *first*, whether the manufacture of indigo is an agricultural purpose; and if not, whether the erection of an indigo factory on land leased for agricultural purposes, makes the land unfit for the purposes of the tenancy; *second*, whether there is any finding of fact arrived at by the lower Appellate Court which makes its judgment unassailable in second appeal; and, *third*, whether the remedy by way of injunction is claimable by the plaintiff.

Now as regards the first question, we are of opinion that though the cultivation of indigo is certainly an agricultural purpose, the manufacture of indigo cakes out of indigo plants cannot be said to be an agricultural purpose. The only way in which the learned counsel for the respondents could say that it should be treated as an agricultural purpose, was by contending that it is by converting indigo plants into manufactured indigo that the indigo-planter can realize the full benefit that the crop may yield. That may be so. But because a crop, converted into a certain manufactured article, would better inure to the profit of the cultivator, that does not make the manufacturing purpose an agricultural purpose or even part of the agricultural purpose of growing the crop.

It becomes necessary next to see whether the building of an indigo factory on land let out for agricultural purposes makes the land unfit for the "purposes of the tenancy." If the land is let out for the sole purpose of cultivating indigo, possibly it might be said that the building of an indigo factory on a part of the land might not render it unfit for the purpose of the tenancy; but 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 purposes of the tenancy, because the purposes of the tenancy being the cultivation of the crops, that is, agricultural purposes, the portion of the land built upon, will evidently be unfit for such purposes. Section 23 of the Bengal Tenancy Act 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," &c.

The tenant defendant is found to be a raiyat with a transferable right of occupancy. Section 23 of the Bengal Tenancy Act therefore applies to this case; and he is therefore not entitled to use the land in a manner which either materially impairs the value of the land, or renders it unfit for the purposes of the tenancy. And in the present case, in the view we take of the manufacturing of indigo not being an agricultural purpose, the erection of an indigo factory must render the land let out for agricultural purposes, unfit for the purposes of the tenancy. But then it is contended that here we are met by a finding of fact arrived at by the Court of Appeal below which makes our interference in second appeal impossible. Is that so? Has the Court below found as a fact that the building of the indigo factory in this case has not rendered the land unfit for the purposes of the tenancy? This brings us to the second question raised in the case; and we are of opinion that it must be answered against the respondents' contention. For all that the learned Judge in the Court of Appeal below says is this: "As the manufacture of indigo is an agricultural purpose, 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." This finding is not a finding of fact in the strict sense of the expression, but is an inference drawn from the Judge's view that the manufacture of indigo is an agricultural purpose. That being so, it is in our opinion not shut out from interference in second appeal.

It remains now to consider the third question. The argument in favour of the respondents upon the point is this: that if the erection of an indigo factory renders the land unfit for the purposes of the tenancy, the plaintiff is under section 25, clause (*a*) of the Bengal Tenancy Act, entitled to eject the tenant, and that is a more complete remedy than a remedy by way of injunction. And if that is so, the Court should not entertain a suit for the less complete remedy. We are of opinion that this contention has several answers to it. One of them is this: the landlord may not want to eject the tenant, but may be content to have the land prevented from being changed prejudicially to his interest or

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being rendered unfit for the purposes of the tenancy, and there is no reason why he should not be allowed to claim this lesser remedy. Then in the next place the plaintiff here is a co-sharer landlord, and unless his other co-sharers joined, he could not, regard being had to the provisions of section 188 of the Bengal Tenancy Act, maintain a suit for ejectment of the tenant. There is nothing in section 54 of the Specific Relief Act to show that an injunction is not claimable in a case like the present. On the contrary, illustration (*k*) of that section, if not quite in point, shows that the Legislature did not intend to exclude cases like the present from the scope of section 54.

For all these reasons, we are of opinion that the decree of the lower Appellate Court must be set aside and that of the first Court restored with costs in this Court and in the Court of Appeal below.

Appeal allowed.

M. N. R.