
(1934) 12 CAL CK 0045
In the Calcutta High Court

Akshay Kumar Saha

APPELLANT

Vs

Kamini Kumar Saha and Others

RESPONDENT

Date of Decision : 13-12-1934

Acts Referred:

Bengal Tenancy Act, 1885 — Section 76, 76(2)(f)

Citation : AIR 1935 Cal 459

Hon'ble Judges : Guha, J; Bartley, J

Bench : Full Bench

Judgement

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 pucca structure in their homestead. The claim of the plaintiffs in the suit was resisted by the defendants, who asserted that they were raiyats with rights of occupancy, and were under the law entitled to build a permanent pucca mantop on their homestead, as a part of their dwelling house.

2. According to the finding arrived at by the Courts below, the defendants were occupancy raiyats, and a mantop in the defendants' house has existed for several generations. The mantop was formerly roofed with corrugated iron sheets and had pucca 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 pucca structure like the building under construction; could the structure be called an improvement within the meaning of Section 76(2)(f) Ben. Ten. Act?

3. 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 pujas 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 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 who possessed 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 connexion *Nayamatoolah v. Gobind Charan* (1866) 6 WR 40).

4. 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 improvement within the meaning of Section 76, Ben. Ten. 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 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 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.

5. I agree.