
(1925) 06 CAL CK 0034
In the Calcutta High Court

Kirtibash Dubey

APPELLANT

Vs

The Indian Iron and Steel Company Ltd.

RESPONDENT

Date of Decision : 17-06-1925

Acts Referred:

Bengal Tenancy Act, 1885 — Section 116, 76

Citation : AIR 1926 Cal 536 : 91 Ind. Cas. 480

Hon'ble Judges : Graham, J; Babington Newbould, J

Bench : Division Bench

Judgement

1. These four appeals arise out of four suits which were tried together. The plaintiffs in these suits are the superior landlords of different shares and the defendant Company is the purchaser of the interest of two tenants under the plaintiffs and their co-sharers. The names of these tenants are Thakurdin and Chakar Hazra. Since its purchase the defendant company has erected buildings on the land purchased by it. The principal relief sought in these suits was a permanent injunction restraining the defendant Company from building on the land for a direction that the buildings should be removed. There was a further claim for compensation for use of water of a tank and for khas possession. Except as regards one or two details which are now unimportant the plaintiff's suit was decreed by the Court of first instance. On appeal one of the four suits was dismissed entirely and in the other three suits the only relief granted to the plaintiffs was for damages for use of the, - water of the tank. These appeals have been argued on a single point and that is whether the defendant Company should be restrained by an injunction from building on the land in suit.

2. So far as the land in Thakurdin's holding is concerned we hold that the rejection of the claim for an injunction necessarily follows from the finding that Thakurdin was the permanent tenure-holder. The learned Subordinate Judge in his judgment has discussed all the incidents of the tenancy and has given good reasons for holding that it was a tenure. On behalf of the appellant this finding was attacked only on the ground that the meaning of the word "nij jote" had

been misunderstood. Our own experience is the same as that of the Subordinate Judge. Nij jote means literally one's own cultivation. This has in Bengal a special significance and the fact that this expression is coupled with the word "khamar" in Section 116 of the Bengal Tenancy Act supports this view although that section refers to the rights of proprietors and not tenure-holders. As a purchaser of a permanent tenure the defendant Company has undoubtedly the right to build permanent structures on the land which was included in the holding, which they had purchased from Thakurdin. As regards the land of Chakar's holding the question is one of more difficulty. There is a concurrent finding of both the Courts below that the interest of Chakar was that of a raiyat at fixed rent. The learned Subordinate Judge has held that under the terms of his tenancy Chakar was not restrained from building on the land.

3. On behalf of the appellant but attention has been drawn to an unreported decision of this Court in Appeal from Appellate Decree No. 438 of 1921 decided on the 8th June 1922. This is cited as an authority for holding that a raiyat whether he is an occupancy raiyat or one holding at fixed rate of rent is not entitled to build on the land of his tenancy so as to render that land unfit for the purposes of the tenancy. But that decision is not an authority for holding that in no case can a raiyat holding at fixed rent build structures on the land of his holding other than buildings which would be of the kind defined as "improvement" in Section 76 of the Bengal Tenancy Act. We have not to decide the general question as to the right of raiyats at fixed rent to build on the land of their holding. What we have to decide is whether on the facts found by the final Court of fact this is a case in which an injunction should be granted. The case cited on behalf of the appellant was one in which an injunction had been granted on the finding that the tenant had, as a matter of fact, rendered the land unfit for the purposes of his tenancy. As was pointed out in the judgment this finding was a finding of fact which was final on the Court of second appeal and the decision of the Judicial Committee in the case of Hari Mohan Misser v. Surendra Narayan Singha 34 C. 718 : 12 C.W.N. 794 : 6 C.L.J. 19 : 9 Bom. L.R. 750 : 17 N.L.J. 361 : 2 M.L.T. 399 : 34 I.A. 133 (P.C.) was cited in this connection. We are in entire agreement that when an injunction is granted on such a finding it cannot be reversed in second appeal. But in the present case the finding is to the contrary. The finding of the first Court was that the disputed land was settled for agricultural purposes. Though there is no express reversal of this finding it is obvious from the judgment of the lower Appellate Court that it did not agree that the disputed land of Thakurdin and Chakar was settled for agricultural purposes only. It has held that these two fixed raiyati holdings were not subject to any limitation. The mention of two raiyati holdings refers to Chakar's as well as Thakurdin's since he has dealt with this point on the supposition that Thakurdin might be a holder of a fixed raiyati holding if he were not a permanent tenure-holder. He has further held that no restricted covenant against the building on the land can be inferred by implication. As regards the terms of the lease to Chakar there is no document and we must accept the finding of the lower

Appellate Court as to the terms on which Chakar took the lease as a finding of fact. The finding is, therefore, contrary to the finding in the case cited that the defendant Company had by building on the land not rendered the land unfit for the purposes for which the tenancy was created. There are other findings of the learned Subordinate Judge which are binding on us in second appeal and would be a bar to the grant of the injunction sought by the plaintiffs in these suits. He has held that if the building of Chakar be regarded as waste it is of the class known as ameliorating waste. It being found that there was no covenant in respect of the building applying the principle enunciated in the decision of the House of Lords in *Doherty v. Allman* (1878) 3 App. Cas. 709 : 39 L.T. 129 : 26 W.R. 513, we must hold that on this finding no injunction should be granted by a Court in the exercise of its discretionary power.

4. The result is that these appeals fail and are dismissed with costs.