

(1917) 06 PAT CK 0002

In the Patna High Court

Case No : Second Civil Appeal No. 1339 of 1916

Mahadeo Rai

APPELLANT

Vs

Sheogulam Mahto

RESPONDENT

Date of Decision : 11-06-1917

Acts Referred:

Citation : (1917) 06 PAT CK 0002

Judgement

1. The claim in this suit, in the form in which it was originally presented, was one for ejectment coupled with a claim for compensation for user by the defendants of their holding, as tenants of the plaintiffs, in a manner which was unfit for the purposes of the tenancy. The defendants are the tenants of the plaintiff in respect of 14 Bighas 7 Kattas 19 Dhurs of land. The lands of which the defendants are tenants are claimed by them as their kashtkari lands situated in Mauza Bangra; and in a basti adjacent to the lands in dispute the defendants have what is termed a residence. In or about the year 1912 the defendants erected, upon 7? Dhurs of the 14 Bighas 7 Kattas 19 Dhurs of land in their possession as tenants, a katcha pucca house which may have been intended either for purposes of a dwelling house or as a shed for their cattle. The plaintiff brings this suit baaing his claim on section 155 of the Bengal Tenancy Act. The plaintiff alleges that the defendants in erecting the house in question have used the holding for purposes inconsistent with the nature of the tenancy. Both the lower Courts have held that the erection of the house was an improvement, and we gather from the observations of the lower Appellate Court that the improvement was of a suitable character having regard to the nature of the tenancy. This finding of fact arrived at by the lower Courts practically disposes of this appeal. The plaintiff entirely abandoned his claim for ejectment, certainly in the lower Appellate Court, and he merely claimed compensation for the alleged damage sustained by him. A tenant is entitled to effect on his holding any improvement which would add to the value of the holding. The clauses which specify what constitutes improvements within the meaning of section 76 of the Bengal Tenancy Act are not exhaustive. However, clause (f) of sub-section (2) of

section 16 of the Act provides that a Raiyat may erect a suitable dwelling house for himself and his family together with all necessary outhouses. Both the lower Courts have, however, come to a definite finding of fact that the erection put up by the defendant is an improvement, and the lower Appellate Court holds that the improvement is consistent with the purposes of the tenancy. This is a finding of fact by which we are bound in second appeal. The fact that the defendants have a house in an adjacent Mauza would not, in our opinion, deprive them of their right to erect upon their occupancy holding another house for the purpose of making a residence for themselves and their family.

2. The appeal, therefore, fails and is dismissed with costs.