

(1916) 04 CAL CK 0006
In the Calcutta High Court

Rai Charan Mahanti and Others

APPELLANT

Vs

Kanai Kamar and Others

RESPONDENT

Date of Decision : 04-04-1916

Acts Referred:

Bengal Tenancy Act, 1885 — Section 178

Citation : 34 Ind. Cas. 72

Hon'ble Judges : Lancelot Sanderson, C.J.; John Woodroffe, J

Bench : Division Bench

Judgement

Lancelot Sanderson, C.J.—The facts of this case are that the plaintiffs purchased at an auction-sale, held under a decree which had been obtained against the defendants, the mocrari tenant right of the village of Jhilimili.

2. The defendants Nos. 1 to 3 and another are tenants of the plaintiffs under a lease granted by the plaintiffs, dated 14th April 1892, in respect of the lands in the village, except 30 bighas of lands which the plaintiffs "kept in khas" and the trees hereinafter referred to. The defendants Nos. 4 to 6 are sub-tenants of defendants Nos. 1 to 3. In the action the plaintiffs ask for a declaration that the right of the plaintiffs as stated in the plaint may be declared in the trees in the land described in schedule (ka) in the plaint which, as I understand, include all the trees on the land demised by the plaintiffs, and for a permanent injunction restraining the defendants from opposing the plaintiffs in any way in their possession of the aforesaid trees and for a decree awarding Rs. 156, the value of lac grown on 13 trees.

3. As regards the last mentioned claim which was in the nature of damages, it was admitted by the learned Vakil for the appellants that the matter was not open to him as the lower Appellate Court had found against the plaintiffs on a question of fact.

4. The claim for the declaration and injunction, therefore, remained.

5. The plaintiffs wish to cultivate lac on the trees in question and allege that the

defendants are threatening to oppose them in their possession of the trees in the mouzah. The lower Appellate Court has held that they are entitled to nothing more than a bare declaration of right in the trees and they are not entitled to khas possession or to a perpetual injunction against the defendants.

6. The question primarily depends upon the terms of the lease.

7. The lease, after providing that the plaintiffs have settled all the remaining lands on the lessees at an annual rent of Rs. 125 and that the lessees should enjoy the aforesaid lands in jots by tilling and cultivating it themselves and through their tenants, proceeded as follows:

Be it expressed here that all trees, large and small, that stand on the aforesaid land and that may grow in future belong to you (i.e., the plaintiffs for the purpose of this case) in khas. We (i.e., for the purpose of this case the defendants Nos. 1 to 3) shall be able to enjoy the fruits and flowers of the said trees only at your permission but on no account we shall be able to take the trees.

8. The original of this part of the kabuliat, and what I understand is a correct literal translation, are to be found at page 10 of the paper-book in the judgment of the learned Munsif. The effect of this clause, in my judgment, is to exclude the trees from the lease and that such trees remained in the khas possession of the plaintiffs; the lessees, however, being granted a license to enjoy the fruits and flowers of the said trees at the permission of the plaintiffs.

9. The first question which arises is whether such a license to enjoy the fruits and flowers of the said trees would include the right to carry on the artificial cultivation of lac on the trees and enjoy the results thereof.

10. Prima facie in my judgment this would clearly not be included in the license. "Fruits and flowers" of the trees would in the ordinary meaning of the words include the natural products of the trees only; but it is argued that the circumstances existing at the date of the lease must be looked at for the purpose of construing the words.

11. The lower Appellate Court has found from the evidence that the Santhals had been growing lac from before the date of the kabuliat on those trees" and that the words phal phul, in the absence of express reservation, embraced the taking of the produce of the trees generally and so included the growing of lac on the trees.

12. This Court is not in a position to review this finding of fact as long as there was evidence on which the lower Appellate Court could act, and I am not aware that it has been suggested that there was not such evidence. In view of this finding of fact, it must be taken that the parties to the lease were aware of the existence of the cultivation of lac upon the trees by the defendants or their tenants at the date of the lease, and consequently I think it is possible that the words phal phul may have been intended to have a wider application than the

English words "flowers and fruits," and accordingly I am not prepared to dissent from the decision of the lower Appellate Court. I express no opinion as to whether the license above referred to is a revocable or irrevocable license, as the point has not been raised or argued before us.

13. In view of this conclusion it is not necessary to deal with the other points raised by the defendants; and I think the appeal should be dismissed with costs.

Woodroffe, J.

14. The suit of the plaintiff is, when substantially regarded, a suit for an injunction restraining the defendants from interfering with his alleged right to cultivate shellac on trees standing on ground leased to the defendants, but the ownership of which trees was declared by the lease to be in the lessor subject to the right of the lessees to phal and phul in respect thereof. The grounds of the injunction are that the plaintiff cultivated lac on certain of the trees which was appropriated by the defendants. This has been found not to be the fact. But it is also alleged that the defendants threaten to oppose the plaintiff's alleged right in respect of other trees of the mousa. Formally, therefore, a case for an injunction is made out if the right claimed is established. This is on various grounds. The matter has previously been before four Courts which have decided favourably to the defendants, and the District Judge has found that the appellant before us, the plaintiff, having been punished for his attempt to break the lac grown by the Santhal defendants, has shifted his ground and set up a false story of having himself grown lac on other trees of the appellant's tenancy. He finds, and I think these facts are relevant to the matter before us, that the landlord did not grow lac as he claims to do, and that the defendants have grown lac for over 12 years and had been growing lac before the date of the kabuliat to the plaintiff, in construing the kabuliat it is permissible to look at the circumstances under which it was executed. It has been found that the Santhals have been living throughout on cultivation and the produce of the forest, of which the plaintiff must be taken to have been aware. The good land was kept khas by the plaintiff and the defendants were set to reclaim the rest including the jungle land. According to the plaintiff they may not remove trees, large or small, and, therefore, the scope of the reclamation of the forest land is to that extent limited. At the same time he says they are not to live on the produce of the forest except the flowers and fruits of the trees, in the strict sense, which are of little value. They are not entitled, it is alleged, in particular to cultivate shellac or to take wild shellac and must permit him to do both. The Judge finds that the plaintiffs who are rich men were mere rent-receivers and the cultivating interest was made over to the defendants, subject to the terms of the lease. I would determine this question upon a construction of the lease only. I am not prepared to disagree from the view that phal and phul would include produce of the trees other than the particular flowers and fruits of the trees itself. This is the view of the District Judge and of the first Munsif who tried the case. The second Munsif was of opinion that phal and phul did not include cultivation of shellac, but he left open

the nature of the license to take phal and phul : for instance, whether that included the right to take fire-wood, thus showing that in his opinion also it is possible that the word phal has wider meaning than that sought to be attached to it by the appellant. If this view taken by the Judge be the correct interpretation of these words, then shellac would be phal. But it is not necessary to base the case on this, for in the view I take, a transfer of property passes to the transferee the interest of the transferor, unless a different intention is expressed or necessarily implied. Now what was it that the lessor reserved? There is no doubt that the property in the trees was reserved, and the lessees were prohibited from taking them away. The exact terms of the lease are "all trees, large and small, belong to you in khas," we shall not be able to take them away." We shall be able to enjoy the phal phul of the trees only at your permission." There is nothing unusual in this reservation of the trees. The lease means what it says, namely, that the trees themselves remain the property of the lessor notwithstanding the lease and, therefore, cannot be taken away. It does not say, and in my opinion does not mean, that the landlord was entitled to come on the land to pursue a regular course of cultivation of shellac on the property he had leased to the defendants. If this had been originally intended it would probably have been inserted in the lease, for, according to the evidence, from before that date lac had been cultivated by the Santhals: nor should we expect to find, as the District Judge finds, that there has been no user of the alleged right by the plaintiff-landlord and a user by the tenants for over 12 years. It is not improbable, therefore, that the claim now set up is an afterthought, when it was discovered that the tenants were making some profit from the shellac in the jungle. On the ground, therefore, that the lease did not reserve to the landlord the right of cultivation claimed, and that the reservation of the trees is not a reservation of such right to cultivation, I hold that the Judge is right in determining that the plaintiffs have not established the right claimed in the trees reserved. This ownership does not carry with it a right to go on the tenants' land to cultivate shellac on the trees reserved. It follows that the plaintiffs are not entitled to the injunction claimed. It is not necessary to determine the other points raised, in particular that of limitation or adverse possession or that which is said to arise u/s 178 and other sections of the Bengal Tenancy Act. I would, therefore, affirm the decree of the District Judge and dismiss this appeal with costs.