
(1941) 01 CAL CK 0006

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 275 of 1939

Raja Kamalaranjan Roy

APPELLANT

Vs

Abdul Gafur

RESPONDENT

Date of Decision : 08-01-1941

Acts Referred:

Citation : (1941) 01 CAL CK 0006

Judgement

Sen, J.—The Plaintiff who is the Appellant instituted this suit upon the following allegations. He let out the land in suit as culturable land to one Nabu who was given a raiyati interest in the land. He cultivated it for many years and thereafter he sold it to the present Defendant Abdul Gafur. This Defendant excavated a portion of the land and made it into a tank. He took the earth obtained by this excavation and raised the remaining portion of the land for the purpose of erecting a house thereon. The Plaintiff's case is that the Defendant has rendered the land unfit for the purpose for which it was let out and that this use of the land by the Defendant has materially impaired its value and altered its nature. On these grounds, the Plaintiff prayed for a mandatory injunction upon the Defendant directing him to restore the land to its original condition and also for a perpetual injunction restraining him from doing the acts stated above. The defence taken is that the Defendant is an agriculturist who has other land near the land in suit and that he was entitled under the law to excavate a tank on the land and to build a house on the remaining portion of it inasmuch as this helped him in the cultivation of his other lands and inasmuch as the excavation of the tank and the erection of the house constituted improvements within the meaning of sec. 76 of the Bengal Tenancy Act.

2. Both Courts have held that the excavation of the tank and the proposed building are improvements within the meaning of sec. 76 of the Bengal Tenancy Act and that the Plaintiff is not entitled to any relief.

3. In my view, the decision of both the Courts are wrong. It is clear from their judgments that the land was leased out originally for agricultural purposes. The

learned Advocate for the Respondent contends that this has not been established, and he points out that the lease to his client's vendor has not been produced. Now it is stated in the judgments of the Courts below that it was admitted before the Courts that the land was let out as raiyati land. I have gone through the evidence and there is nothing in it which suggests that the Plaintiff's case that the land was let out as raiyati land is not a true one. In my opinion, it has been clearly established that the land was let out for the purpose of agriculture to the vendor of the Defendant. It is admitted that one portion of the land had been converted into a tank and the remaining portion had been raised for the purpose of the erection of a dwelling house thereon. Thus no portion of the land can be used for agriculture. Now sec. 23 of the Bengal Tenancy Act says that:

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 purpose of the tenancy.

4. I have found that the purpose of the tenancy was agriculture. It has also been established that so far as this land is concerned, it cannot be used for agricultural purposes. It is thus clear that the Defendant is using the land in a manner which is prohibited by the provisions of sec. 23 of the Bengal Tenancy Act.

5. It was argued on behalf of the Respondent that sec. 76 of the Bengal Tenancy Act would allow the land to be used in this fashion inasmuch as a tank for the purpose of agriculture and a dwelling house erected for a cultivator constitute improvements. The fallacy in this argument is obvious. Sec. 76 sets out that certain things shall be presumed to be improvements within the meaning of the section until the contrary is shown and in the enumeration of what constitute improvements is to be found a tank used for agricultural purposes and a dwelling house for the use of an agriculturist. This part of the section must not be divorced from the first portion of the section. The first portion says this:

For the purposes of this Act, the term "improvement" used with reference to a holding shall mean any work which adds to the value of the holding which is suitable to the holding and consistent with the purpose for which it was let.

6. The improvement must therefore be an improvement to the holding in which the construction is made. The Act does not empower a tenant to utilise one holding for the purpose of improving another holding irrespective of the question whether such use would impair the value of the former holding. Again, the improvement must be consistent with the purpose for which the holding was let and it must add to the value of the holding. It is quite clear from the facts of this case that so far as the holding in suit is concerned, it can no longer be used for the purpose for which it was let, viz., agriculture, and its value as an agricultural holding has certainly been impaired. It may be that the way in which this holding is being used will improve certain other holdings of the Defendant but the law nowhere provides that the land held under one landlord may be impaired in value

for the purpose of improving the land held under another landlord. The word "improvement" used in sec. 76 means improvement of the holding on which a construction has been made or other work carried out. It has no reference to the improvement of any adjoining holding. I hold, therefore, that the excavation made on the land and the construction proposed to be made are not improvements within the meaning of sec. 76 of the Bengal Tenancy Act and that the Defendant is not entitled to use the land in the way in which he is doing. I accordingly set aside the decree passed by the Court below and direct that the Defendant do restore the land to its original condition and I issue an injunction upon the Defendant restraining him from using the land in such a way as to render it unfit for the purpose of agriculture. The Defendant will fill up the tank within three months from this date, in default, the Plaintiff will fill up the tank and realise the costs of so doing from the Defendant. The Defendant will pay the costs throughout. Leave to appeal under sec. 15 of the Letters Patent is refused.