
(1910) 02 AHC CK 0014
In the Allahabad High Court

Ram Parshad Bhagat

APPELLANT

Vs

Suba Rai and Others

RESPONDENT

Date of Decision : 26-02-1910

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 25

Citation : 6 Ind. Cas. 74

Hon'ble Judges : Tudball, J;Griffin, J

Bench : Division Bench

Judgement

1. The facts of the case are sufficiently set forth in the order of reference of our learned brother. We have been referred to the ruling *Shea Parshad Tewari v. Musammat Mulima Bibi N.W.P.H.C.R.* . The case before the Court was one of distraint and the question for decision was whether, having reference to the provisions of the Sections 115 and 118 of Act X of 1859, Guava trees came within the category of standing crops or the ungathered products. The decision of the Court was to the effect that the term "products of the land" must be construed as equivalent to that which can be gathered or stored; crops of the nature of cereal or grass or fruit crops and it did not apply to the trees from which the crops are gathered. In this view the Court held that the zamindar was not entitled to levy a distress on Guava trees. Section 42 of Act XII of 1881, which reproduced the corresponding section of Act XVIII of 1873, provided that a tenant, ejected in accordance with the provision of the Act, shall be entitled to any growing crops or other ungathered products of the earth, belonging to him and growing on the land at the time of his ejectment, and to use the land for the purpose of tending and gathering in such crops or other products paying sufficient rent therefor.

2. In the case of *Abdul Baki v. Mathura Parshad A.W.N.* (1893) 24, which came before the Board of Revenue of these Provinces, the question for decision was whether the terms growing crops, used in Section 42 of the Rent Act included rose and jasmine plants as well as the flowers they bore. It was held by the

Members of the Board of Revenue that the words "growing crops, did so include the rose and jasmine plants as well as their flowers. By Section 76 of the Tenancy Act, II of 1901, the tenant is given a right to sue for an adjudication as to the price of crops and other products of his holding. The preceding Sections 74 and 75 have to be read along with Section 76.

3. Section 94 gives the tenant a right to use the land for the purpose of growing, tending, gathering and removing crops and all other products of the earth, but provides that he shall not be entitled, in the absence of a contract or local usage to the contrary, to cut or remove any trees upon his holding. Section 75 is as follows:

If at the date on which the ejectment takes effect there are ungathered crops or other products upon the land, the landholder shall have the option of purchasing the same, and upon his forthwith tendering the price of the same to the tenant, the right of the tenant to such crops or other products and to use the land for the purpose of tending, gathering and removing the same shall cease. If the landholder does not elect to purchase the same, the tenant shall be entitled to use the land as aforesaid for a further period until such crops or other products have been gathered and removed paying a fair rent therefor.

4. The words "other products" in Section 76 must be read as meaning other products of the earth and other products upon land referred to in Sections 74 and 75. We think that the language of Sections 74, 75 and 76 is much wider than the language of the corresponding section in the Rent Act, XII of 1881, and that plants such as jasmine and bela are included in the expression other products".

5. The Court below has not come to any finding as to the value of the plants themselves. It is, therefore, necessary to remit an issue under the provisions of Order 41, Rule 25, Civil Procedure Code, for a finding as to the value of the flowers.

6. We may here note that the defendant did not in the written statement contest the right of the plaintiff to recover compensation for the plants.

7. No further evidence need be taken 10 days will be allowed for objections on the return of the finding.