

(1903) 06 CAL CK 0023
In the Calcutta High Court

Surendra Narain Singh

APPELLANT

Vs

Hari Mohan Misser

RESPONDENT

Date of Decision : 01-06-1903

Acts Referred:

Bengal Tenancy Act, 1885 — Section 23, 25(a)
Specific Relief Act, 1877 — Section 54

Citation : (1904) ILR (Cal) 174

Hon'ble Judges : Pargiter, J; Banerjee, J

Bench : Division Bench

Judgement

Banerjee and Pargiter, JJ.—In this appeal, which arises out of a suit brought by the plaintiff-appellant to obtain an injunction restraining the defendants from building an indigo factory on the land held by defendant No. 6 under the plaintiff, the question raised on behalf of the plaintiff appellant is whether the learned Judge in the Court of Appeal below was right in holding that the manufacture of indigo was an agricultural purpose.

2. On the other hand, the learned Counsel for the defendants-respondents contends that not only is the learned Judge below right in the view has taken that the manufacture of indigo is an agricultural purpose, but that the conclusion he has arrived at, that the plaintiff's suit should be dismissed, is incapable of being interfered with in second appeal, because it is based upon the finding of fact that the defendants have done nothing in violation of the conditions of the tenancy; and he further contends that the suit is also liable to dismissal on the ground that a suit for injunction is not maintainable, where, if the plaintiff's contention be right, a more complete remedy by ejectment of the tenant defendant was obtainable.

3. Upon these contentions the questions that arise for consideration are, first, whether the manufacture of indigo is an agricultural, purpose; and if not, whether the erection of an indigo factory on land leased for agricultural purposes, makes the land-unfit for the purposes of the tenancy; second, whether

there is any finding of fact arrived at by the lower Appellate Court which makes its judgment unassailable in second appeal; and, third, whether the remedy by way of injunction is claimable by the plaintiff.

4. Now as regards the first question, we are of opinion that though the cultivation of indigo is certainly an agricultural purpose, the manufacture of indigo cakes out of indigo plants cannot be said to be an agricultural purpose. The only way in which the learned Counsel for the respondents could say that it should be treated as an agricultural purpose, was by contending that, it is by converting indigo, plants into manufactured indigo that, the indigo-planter can realize the full benefit that the crop may yield. "That may be so. But because a crop, converted into a certain manufactured article, would better inure to the profit of the cultivator, that does not make the manufacturing purpose an agricultural purpose or even part of the agricultural purpose of growing the crop.

5. It becomes necessary next to see whether the building of an indigo factory on land let out for agricultural purposes makes the land unfit for the "purposes of the tenancy." If the land is let out for the sole purpose of cultivating indigo, possibly it might be said that the building of an indigo factory on a part of the land might not render it unfit for the purpose of the tenancy; but where, as in this case, land has been let out for agricultural purposes generally, the erection of an indigo factory in a part of such land must render it unfit for the purposes of the tenancy, because the purposes of the tenancy being the cultivation of the crops, that is, agricultural purposes, the erection of the law built upon, will evidently be unfit for such purposes, Section 23 of the Bengal Tenancy Act says:

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 purposes of the tenancy," &c.

6. The tenant defendant is found to be a raiyat with a transferable right of occupancy. Section 23 of the Bengal Tenancy Act therefore applies to this case; and he is therefore not entitled to use the land in a manner which either materially impairs the value of the land, or renders it unfit for the purposes of the tenancy. And in the present case, in the view we take of the manufacturing of indigo not being an agricultural purpose, the erection of an indigo factory must render the land let out for agricultural purposes, unfit for the purposes of the tenancy. But then it is contended that here we are met by a finding of fact arrived at by the Court of Appeal-below which; makes our interference in second appeal impossible. Is that so? Has the Court below found as a fact that the building of the indigo factory in this case has not rendered the land unfit for the purposes of the tenancy? This brings us to the second question raised in the case; and we are of opinion that it must be answered against the respondents contention. For all that the learned Judge in the Court of Appeal below says is this: "As the manufacture of indigo is an agricultural purpose, it may be fairly held that the erection of indigo buildings is also in conformity with the purposes for which an agricultural holding is let." This finding is not a finding of fact in the

strict sense of the expression, but is an inference drawn from the Judge's view that the manufacture of indigo is an agricultural purpose. That being so, it is in our opinion not shut out from interference in second appeal.

7. It remains how to consider the third question. The argument in favour of the respondent upon the point is this: that if the erection of an indigo factory renders the land unfit for the purposes of the tenancy, the plaintiff is u/s 25, Clause (a) of the Bengal Tenancy Act, entitled to eject the tenant, and that is a more complete remedy than a remedy by way of injunction. And if that is so, the court should not entertain a suit for the less complete remedy. We are of opinion that this contention has several answers to it. One of them is this: the landlord may not want to eject the tenant, but may be content to have the land prevented from being changed prejudicially to his interest or being rendered unfit for the purposes of the tenancy, and there is no reason why he should not be allowed to claim this lesser remedy. Then in the next place the plaintiff here is a co-sharer landlord, and unless his other co-sharers joined, he could not, regard being had to the provisions of Section 188 of the Bengal Tenancy Act, maintain a suit for ejectment of the tenant. There is nothing in Section 54 of the Specific Relief Act to show that an injunction is not claimable in a case like the present. On the contrary, illustration (k) of that section, if not quite in point, shows that the Legislature did not intend to exclude cases like the present from the scope of Section 54.

8. For all these reasons, we are of opinion that the decree of the lower Appellate Court must be set aside and that of the first, Court restored with costs in this Court and in the Court of Appeal below.