

(1920) 08 CAL CK 0039
In the Calcutta High Court

Surendra Nath Saha and Others

APPELLANT

Vs

Nakoor Chandra Chakravarty and Others

RESPONDENT

Date of Decision : 09-08-1920

Acts Referred:

Bengal Tenancy Act, 1885 — Section 182, 76

Citation : 64 Ind. Cas. 716

Hon'ble Judges : Asutosh Mookerjee, Acting C.J.; Ernest Fletcher, J

Bench : Division Bench

Judgement

Asutosh Mookerjee, Acting C.J.

1. This is an appeal by the defendants in a suit for an injunction to restrain the construction of a permanent building on the land of the tenancy held by them under the plaintiffs-respondents. The Courts below have decreed the suit.

2. The defendants pleaded that they had a permanent right in the land, and, in the alternative, that u/s 76 of the Bengal Tenancy Act the building under construction was an improvement which did not entitle the plaintiffs to an injunction. The Subordinate Judge has held that the defendants had not established a permanent right in the land. We have consequently to deal with the other aspect of the case.

3. The defendants are in occupation of two parcels, one an agricultural holding, and the other a homestead; and it has been found that the arable land was taken in lease after the homestead. The position consequently is that here is a raiyat who holds his homestead otherwise than as part of his holding as a raiyat. That is exactly the contingency contemplated by Section 182 of the Bengal Tenancy Act. The Legislature has provided that in such an event the incidents of the tenancy of the homestead shall be regulated by local custom or usage, and subject to local custom or usage, by the provisions of the Bengal Tenancy Act applicable to land held by a raiyat. No local custom or usage has been established in the present case. Consequently, the incidents of the tenancy of the

homestead on which the defendants have commenced the construction of the building are regulated by the provisions of the Bengal Tenancy Act applicable to land held by a raiyat. One of these provisions is to be found in Section 76, which is primarily applicable to agricultural holdings, but by virtue of Section 182, is applicable to the present homestead.

4. Now Sub-clause (f) of Clause (2) of Section 76 provides that until the contrary is shown, the creation of a suitable dwelling-house for the raiyat and his family, together with all necessary out offices, shall be deemed to be an improvement within the meaning of the section. The Subordinate Judge has held that this is of no avail to the defendants, because they do not require a pucca building for their residence; in his opinion, the present mud-walled houses With pucca plinths and corrugated iron roofings could hardly be said to be unsuitable and the construction of a masonry building, such as has been attempted by the appellants, could hardly have been contemplated by that section. But the Subordinate Judge has overlooked the decision of this Court in the case of Rati Kishore Barna Sarma v. Barada Kisore Acharjya Chowdhuri 31 C. 1014 : 8 C.W.N. 754, which lays down that there is nothing in Section 76 of the Bengal Tenancy Act to indicate that a suitable dwelling house of an occupancy raiyat as described in that section must be of a temporary description only. In our opinion, Section 182 read with Section 76 shows that the defendants have not exceeded their rights as occupancy raiyats. Consequently, the plaintiffs are not entitled to an injunction.

5. We may add that, as according to the Subordinate Judge, the tenancy of the homestead land was originally created for the purpose of residence, whatever the nature of the tenancy might have been, whether of a temporary or a permanent character, the tenant would be entitled to erect a residence thereon. From this point of view also the plaintiffs are not entitled to an injunction.

6. The result is that on the facts found by the Subordinate Judge, it is conclusively established that the plaintiffs are not entitled in any view to the injunction claimed. The appeal is, therefore, allowed, and the suit dismissed with costs in all the Courts.

Ernest Fletcher, J.

I agree.