

(1935) 02 CAL CK 0039
In the Calcutta High Court

Wazuddin Gazi and Another

APPELLANT

Vs

Munshi Sayeb Ahamed and Another

RESPONDENT

Date of Decision : 19-02-1935

Acts Referred:

Citation : AIR 1935 Cal 464 : 157 Ind. Cas. 353

Judgement

1. These are separate appeals by defendants in a suit. The plaintiffs in the suit in which these appeals have arisen, claimed damages and prayed for a perpetual injunction on the facts and in the circumstances stated below: According to the plaintiffs there were three separate tenancies created in favour of the plaintiffs or their predecessors in title, comprising 121 bighas odd, by defendants 2 to 4, the Sur defendants or their predecessors in interest, described in schedule (ga) to the plaint. The lands in respect of which these tenancies were created were comprised in what is known as Chak Ghosalarabad. The tenancies had been in existence long before the year 1321 B.S., and the plaintiffs were in possession of the lands comprised in the same. In the year 1321 B.S., the Sur defendants leased out the whole chak to one Tarak Nath Banerjee. Subsequently, the interest created in favour of Tarak Nath Banerjee was sold for arrears of rent, and was purchased by the lessors, the Sur defendants. In the year 1332 B.S., the Sur defendants inducted defendants 6 to 16 as Jalkar tenants in respect of the entire chak; and the entire chak, including the lands settled with the plaintiffs, long before the tenancy in favour of the defendants was created in the year 1332 B.S., has been converted into a Jalkar. This has resulted in injury to the plaintiffs inasmuch as the lands on which the plaintiffs were entitled to grow paddy, have been converted into Jalkar, and the possibility of growing crops on the same, which was the purpose of the tenancies in favour of the plaintiff's has been destroyed by the action of the lessors, the Sur defendants and tenants under them. The plaintiffs claimed damages for the years 1333 and 1334 B.S., and prayed for permanent injunction to restrain their lessor defendants 2 to 4 and the tenant defendants 6 to 16, for letting in salt water within the chak in which their tenancies were situate.

2. The lessor defendants, the Surs, in their written statement asserted that the entire chak was a Jalkar, the existence of the three tenancies alleged by the plaintiffs was denied, and the plaintiffs were put to the strict proof of the same. It was further asserted that the plaintiffs had abandoned the lands comprised in the tenancies created in their favour. The claim for damages was resisted, as also the prayer of injunction as made by the plaintiffs in the suit. The other contesting defendants supported the Sur defendants. It may be noticed at the outset that the defence, that the entire chak was a Jalkar, that the denial on the part of the Sur defendants of the tenancies in favour of the plaintiffs, and their defence that the lands comprised in the tenancies had been abandoned, were all negatived by the findings arrived at by the trial Court. The findings arrived at by the trial Court on the question of the existence of the plaintiffs' tenancies, and on the question of abandonment as raised by the defendants were not even attempted to be challenged before the Court of appeal below, on appeal by the defendants. On those findings the position must be taken to be established that the plaintiffs in the suit had a pre-existing right to hold the lands comprised in the tenancies for the purpose of producing crops on the same, and the Sur defendants had no right to create an interest in derogation of the rights of tenants inducted on the lands. The lessors, defendants 2 to 4, were not entitled to interfere with the pre-existing rights of the plaintiffs who were tenants on the lands in suit, by creating an interest in favour of defendants 6 to 11, and they were bound to secure quiet possession of the plaintiffs, keeping in view the purpose of the tenancies created prior to the year 1332 B.S. which tenancies were in existence.

3. As has been observed by the Court of appeal below, the plaintiffs' lands were paddy producing lands, and if the Sur defendants allowed another set of tenants to inundate the plaintiffs' lands with salt water for the purpose of rearing fishes, the Sur defendants were liable for acts by those tenants. The landlord is bound by an implied obligation to indemnify the tenant against disturbance by his own act or by the acts of those who claim under him. The Judge in the Court of appeal below has held on materials before him, that the Sur defendants after the purchase of Tarak Chandra Banerjee's interest in the year 1330 B.S., first conceived the idea of allowing the tenant to rear fish in the chak by ingress of salt water forgetting the interests of those tenants who hold lands within the chak for the purpose of producing paddy. For the purpose of determining whether the decision of the Courts below is right, we have carefully gone through the documents Ex. 20 (a) and Ex. A as also the documents creating or evidencing tenancies in favour of the plaintiffs, and on close-examination of those documents, we have no hesitation in holding that on the documents and on the oral evidence in the case, the Courts below are right in holding that the contesting defendants in the suit against whom a decree for damages has been passed, interfered with the rights of the plaintiffs in such a way as made them liable in damages.

4. The quantum of damages was not in question in these appeals; and the decision fixing the amount of damages must accordingly be affirmed. The relief

claimed in the suit by way of permanent injunction was refused by the Court of first instance. The Court of appeal below, on appeal by the plaintiffs, granted injunction which, it cannot be disposed, amounts to a mandatory injunction, regard being had to the terms of the same. The question of granting injunction by the lower appellate Court was one of the points raised in Second Appeal No. 2335; and it was the only question raised in Second Appeal No. 1632. On the facts and in the circumstances of the case before us, we are decidedly of opinion that the view taken by the trial Court was right, and that the Court of appeal below was not right in granting an injunction, much less an injunction which is mandatory in its nature. The decree of the lower appellate Court so far as it relates to the grant of permanent injunction must be set aside.

5. The result of our decision on questions arising for consideration in these appeals, as indicated above, is that the decrees concurrently passed by the Courts below, in favour of the plaintiffs, respondents, for recovery of damages are upheld. The decree of the lower appellate Court granting permanent injunction to the plaintiffs, is set aside. The plaintiffs' claim for permanent injunction as made in the suit in which these appeals have arisen is dismissed. The order as to costs passed by the trial Court will stand; the parties are to bear their own costs in the lower appellate Court and in this Court.