

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Hari Mohun Misser and others v. Surendra Narayan Singh, from the High Court of Judicature at Fort William in Bengal; delivered the 15th May 1907.*

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Present at the Hearing :

LORD ROBERTSON.

LORD COLLINS.

SIR ARTHUR WILSON.

[*Delivered by Sir Arthur Wilson.*]

The Respondent represents the owner of a ten-and-a-half annas share in a putni tenure of considerable extent, Turuf Inaitpur Katakosc, in the district of Purnea. The putni included amongst other properties a holding to which the present suit relates. This holding had become vested in Ram Kumar Singh, who, it is not disputed, held as an occupancy raiyat, enjoying as such the rights conferred upon a tenant of that class by the Bengal Tenancy Act (No. VIII. of 1885). Ram Kumar Singh, in conjunction with some of the owners of shares in the putni, took steps for the purpose of growing indigo on the holding, and for the erection of an indigo factory within its limits.

The suit out of which this Appeal arises was brought in the Court of the Subordinate Judge of Purnea, by the owners of the ten-and-a-half annas share in the putni, to obtain an injunction restraining the carrying out of the proposed changes. It is unnecessary to consider the

constitution of the suit. It is enough to say that all necessary parties were joined, and that everything turns upon the rights of the ten-and-a-half annas sharers in the putni on the one hand, and those of Ram Kumar Singh, the occupancy tenant of the holding, on the other.

The enactment governing the case is Section 23 of the Bengal Tenancy Act which 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.”

The Subordinate Judge granted the injunction asked for. The District Judge on appeal reversed that decision. As to the first of the two restrictions contained in the section his finding was explicit. He says:—

“The building of a factory with necessary appliance for the manufacture of the plant near to or upon the land on which it is grown would be an operation decidedly for the benefit of the holding, and I fail to see how under any conceivable circumstances the value of the holding could deteriorate in consequence of the erection of such buildings.”

This is a clear finding of fact, which has not been and could not be questioned.

The second restriction in the section is that the user of the land must not be such as to render it unfit for the purposes of the tenancy. The question arising with regard to that restriction was essentially a question of fact, and the District Judge decided it; but in doing so he may seem, perhaps, to have relied, not so much upon the circumstances of the case before him, as upon a proposition which, understood generally, might require qualification, for he says:—

“I think 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.”

What their Lordships, however, have to decide is not whether the judgment of the

District Judge was wholly satisfactory, but whether the learned Judges of the High Court were justified in overruling it, as they did, on second Appeal.

Second Appeals are governed, so far as the present case is concerned, by Sections 584 (a) and 585 of the Civil Procedure Code, under which the Appeal can only lie on the ground of the decision appealed against "being contrary to some specified law or usage having the force of law." The law which the High Court found to have been violated by the District Judge's decision is thus stated :—

"Where, as in this case, land has been let out for agricultural purposes generally, the erection of an indigo factory on a part of such land must render it unfit for the purpose of the tenancy, because, the purpose of the tenancy being the cultivation of crops, that is agricultural purposes, the portion of the land built upon will evidently be unfit for such purposes."

That proposition of law is laid down broadly, without reference to the circumstances of individual cases, without regard to the size of the holding, or of the area withdrawn from actual cultivation, or to the effect of such withdrawal upon the fitness of the holding, taken as a whole, for profitable cultivation.

Their Lordships are unable to concur in the proposition of law so laid down. They will therefore humbly advise His Majesty that the Judgment and Decree of the High Court should be discharged with costs, and those of the District Judge restored. The Respondent will pay the costs of this Appeal.

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