

(1889) 07 CAL CK 0014
In the Calcutta High Court

Ally Mirza Bahadur

APPELLANT

Vs

Rai Jogendra Narain Roy and Another

RESPONDENT

Date of Decision : 23-07-1889

Acts Referred:

Citation : (1889) 07 CAL CK 0014

Hon'ble Judges : Prinsep, J; Hill, J

Bench : Division Bench

Judgement

1. The plaintiff, as zemindar, granted a patni of certain property to the defendant No. 1 who, in turn, has granted a lease for 10 years of certain rights to defendant No. 2. The plaintiff now sues for a declaration that the lease was invalid and contrary to the terms of the patni pattah granted to defendant No. 1. He next asks for a declaration that under the patni lease granted to defendant No. 1, he has no right to hold, enjoy, open or work any mine or quarry or dig and cut away any mineral substances, etc. Thirdly, he asks for a declaratory decree that such rights are vested only in the plaintiff, and, lastly, he asks for compensation and for an injunction.

2. The Subordinate Judge has dismissed the suit holding that these rights were conferred on defendant No. 1 under the patni lease and that, therefore, the sublease granted to defendant No. 2, was a valid instrument.

3. The question raised in this appeal, therefore, is what are the rights granted to defendant No. 1 by the patni lease, and whether that lease covers all mining rights, especially such rights as are conferred on defendant No. 9 by the sublease. There is no case law bearing directly on this subject which is one of extreme importance. The matter however, may possibly be settled in respect of all patni leases, granted after the passing of the Transfer of Property Act according to the terms of that Act, but the lease before us bears an earlier date. It is, therefore, for us to determine the rights of the parties under the terms of the patni lease. We may state generally that that lease follows the term of an ordinary patni lease. It generally gives to the patnidar all the rights previous

exercised by the zemindar. In a portion that lease to be found at the bottom of page 66 of the paper-book, it declares the patnidar to be entitled to hold and enjoy owner of the patni talook, all the lands of the said mahals, cultivated and uncultivated and then it proceeds to specify certain rights connected with the enjoyment of that property concluding with the expression, etc, and then follow the words darobust zemindari hakook, which we understand to mean all zemindari rights whatsoever. There is no reservation in respect of any such rights except certain insignificant rights such as are usually reserved to zemindars, as for instance, the right of cutting down fruit trees. It is contended that these terms darobust zemindari hakook are intended to refer only to rights such as have been previously described, rights generally known as ejusdem generis. But the interpretation that we think should be put on that expression is that it was intended, to use a familiar expression, to throw a net so as to include every thing which might be considered as belonging to the zemindari right. We are further of opinion that the second paragraph of the first Clause of Section 11 of the Patni Sale Law enacts that the property reserved to the zemindar under an ordinary patni lease would be merely his right to receive rent. Consequently, unless any other rights are specially reserved under the terms of the lease between the parties, we think it must be held that all rights are conferred on the patnidar. In our opinion, not only has there not been such a reservation made with respect to mining rights but, under the terms of the lease already quoted, these rights were granted with the patni. In fact, the zemindar did his best to divest himself of all zemindari rights with the exception of some very insignificant rights which were specially reserved. The appeal must, therefore, be dismissed and the order of the Subordinate Judge affirmed. The defendants will be entitled to one set of costs in this appeal.