

(1941) 01 CAL CK 0015
In the Calcutta High Court

Bahadurmull Chowdhury and Others

APPELLANT

Vs

Nagarmull Madangopal and Others

RESPONDENT

Date of Decision : 24-01-1941

Acts Referred:

Specific Relief Act, 1877 — Section 42

Citation : AIR 1941 Cal 534

Hon'ble Judges : Lort-Williams, J; Lord Williams, J

Bench : Division Bench

Judgement

Lort-Williams, J.—In this suit the plaintiffs alleged that on 30th April 1940, the Registrar of the Tribunal of Arbitration of the Bengal Chamber of Commerce informed them that the defendants had applied for arbitration, in accordance with the provisions of an alleged contract, regarding a claim for damages for failure to deliver a thousand maunds of jute under Messrs. Bri. dhichand Mulchand"s contract No. 48 dated 9th November 1939. Thereupon, they inspected the contract or bought note which had been passed by the broker and dated 9th November 1939 and found that it had been materially altered without their consent, and this had been done fraudulently, and the contract was rendered void by such material alteration. The contract was for the purchase by the defendants from the plaintiffs of jute for delivery to the Presidency Jute Mills, "shipment or rail despatch November 1939." The defendants had inserted the word "December" after the figures "1939." The contract or bought note contained an arbitration clause. The plaintiffs argued that the alteration vitiated the document altogether, and there being no contract there could be no submission to arbitration.

2. The defendants alleged that the alteration was made not only with the consent but at the request of the plaintiffs and for their benefit, and that a letter of confirmation was sent to them on 10th November 1939. Subsequently, the plaintiffs informed the broker that they did not require any extension of the period of shipment and therefore any alterations in the broker"s notes were

unnecessary, and about the same date the plaintiffs informed the defendants that they would deliver the goods in November 1939 and did not desire to avail themselves of the benefit of the alteration in the bought note. Thereafter the alteration was treated by the parties as of no effect whatsoever, and the contract was treated as for delivery in November 1939. The sold note which was in the hands of the plaintiffs was never altered. The defendants further alleged that on 18th November 1939 the plaintiffs wrongfully cancelled and repudiated the contract, falsely alleging that they had tendered the goods to the Presidency Jute Mills in November and that acceptance had been refused. The defendants contended that in any event the plaintiffs were estopped by their conduct from claiming that the contract was avoided.

3. Mr. Khaitan, on behalf of the defendants, raised two preliminary points. First, that the suit is not maintainable because the Court's powers to make declaratory decrees are limited to those contained in Section 42, Specific Relief Act, and apply only to cases in which the plaintiff, being entitled to any legal character or to any right to any property, may bring a suit against any person denying his title to such character or right. Such undoubtedly is the position in law under that section- *Deokali Koer v. Kedar Nath* (12) 39 Cal 704. But in the present suit the plaintiff also asks the Court to adjudge that the contract is void and order it to be delivered up and cancelled, as provided by Section 39. He alleges that if left outstanding the contract may cause him serious injury because the defendants threaten to proceed with the arbitration before the Tribunal of Arbitration of the Bengal Chamber of Commerce.

4. His second point was that, even though the contract might be avoided by the alteration, such avoidance was not ab initio and therefore the agreement to submit all disputes to arbitration was still valid and enforceable. The law may be summarized as follows: An alteration in a material part of an instrument under hand made by, or with the consent of, one party thereto, but without the consent of the other party, makes the instrument void to this extent that the party responsible for the alteration cannot enforce the instrument against a party not responsible. But the latter can enforce it against the former, if he can prove the original form of the instrument, and where the instrument operates as a conveyance, the alteration will not prejudice it in this respect. The effect of an alteration of an instrument in writing is the same as in the case of deeds. The principle established in *Pigot's case* (1614) 11 Coke Rep 262 for deeds was applied to bills of exchange by the decision in *Master v. Miller* (1791) 4 TR 320, and was subsequently extended to other instruments such as bought and sold notes by the decisions in *Powell v. Divett* (1812) 15 East 29 and *Mollett v. Wackerbarth* (1847) 5 CB 181. The avoidance operates as from the time of alteration, so as to prevent the person, who has made or authorized the alteration and those claiming under him, from putting the instrument in suit to enforce against any party bound thereby, who did not consent to the alteration, any promise thereby made. The agreement to submit to arbitration was such a promise. And for these reasons I decide that both preliminary points fail.