
(1940) 05 CAL CK 0018
In the Calcutta High Court

Carritt Moran and Co.

APPELLANT

Vs

Manmatha Nath Mukherjee

RESPONDENT

Date of Decision : 10-05-1940

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 144, 145
Penal Code, 1860 (IPC) — Section 447
Transfer of Property Act, 1882 — Section 53A

Citation : AIR 1941 Cal 691

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

Bench : Full Bench

Judgement

Derbyshire, C.J.—This is an appeal from a judgment of McNair J. delivered on 24th April 1939, and the consequent decree, whereby he awarded a sum of Rs. 28,530-4-1 to the plaintiff as damages. The plaintiff, Manmatha Nath Mukherjee, is a gentleman who has been interested for some time in tea companies; he is also a director of the Bengal Central Bank, Ltd., which has its head office in Calcutta. The defendants are a firm of auctioneers and tea brokers, who sell tea in the wholesale way in Calcutta. The damages awarded are in respect of the sale by the defendants of tea grown and manufactured on the Parkul Tea Estate in Sylhet between April and December 1936, on the ground that the said sales were wrongful sales of the plaintiff's tea.

2. In July 1935 the Parkul Tea Estate was owned by the Chandpore Tea Company, Ltd., a company with its registered office in London; the agents of the company in Calcutta were Messrs. Barry & Co. Mr. P.C. Syam, a gentleman of about 35 years of age who had already agreed to buy the Longucherra Tea Estate from the Bengal Central Bank on an instalment purchase, was in negotiation with Messrs. Barry & Co., for the purchase of the Parkul Tea Estate. Between 24th July 1935 and 20th September 1935, letters had passed between Messrs. Barry & Co. and Mr. Smart, the Superintendent of the Chandpore Tea Company and Mr. Syam relative to the purchase of this estate. The parties had got a long way towards an agreement but had not definitely arranged the final terms. On 23rd September

1935, the plaintiff, who as a Director of the Bengal Central Bank had dealings with Mr. Syam in connexion with the purchase of the Longucherra Tea Estate, had a conversation with someone in Messrs. Barry & Co.'s office in Calcutta and made a verbal offer for the purchase of the Parkul Tea Estate which is set out in Messrs. Barry & Co.'s letter to the plaintiff of 23rd September 1935. This offer was slightly better as regards the price and more definite as regards the terms, than the offer previously made by Syam. From that time onwards, Syam disappeared from the picture with respect to the purchase of the Parkul Tea Estate. Other letters passed between the plaintiff and Messrs. Barry & Co., during the first half of October and, as a result, an agreement in writing dated 14th October 1935, between the Chandpore Tea Company and the plaintiff was entered into. The relevant terms of that agreement are:

(1) The company to sell and the purchaser to buy the Parkul Tea Estate free from all encumbrances together with the lands, buildings, machinery, fuel, implements, tools, tea boxes, stores standing or being in or upon the premises and also all the tea and crop and all tea already manufactured or to be manufactured during the season 1935.

(2) The purchase price fixed at a total of rupees two lacs, subject to certain adjustments in respect of tea grown and manufactured up to 14th October 1935.

(3) Subject to due payment of the whole of the consideration money by the purchaser on or before 14th October 1935, formal delivery of possession of the Parkul Tea Estate to be given by the company to the purchaser on 15th October 1935.

(4) As from delivery of possession on 15th October 1935, all tea on the garden whether growing, plucked, manufactured, or in the process of manufacture, to become the absolute property of the purchaser and to be under his sole and absolute control.

(6) The execution of a formal deed of conveyance to be executed later.

(8) The purchaser to be entitled to the benefit of all tea purchased or manufactured by the tea estate during the 1936 season, and the company to render to the purchaser account sales of all teas sold by the company whether in London or Calcutta less shipping, freight, warehouse, landing, and selling charges and to pay to the purchaser the net proceeds of such sales on realisation.

3. The agreement was signed by Mr. Cooper, on behalf of the Chandpore Tea Company, and by Mr. Mukherjee, the plaintiff. The tea producing season is from March to November each year. On 15th October 1935, the plaintiff paid Messrs. Barry & Co.'s agent rupees two lacs in respect of the purchase. On the same date the plaintiff wrote to Messrs. Barry & Co. asking them to inform the Tea Licensing Committee and the Secretary of the Indian Tea Association that he had bought the Parkul Tea Estate. On 16th October 1935, Messrs. Barry & Co. wrote back informing the plaintiff that they were advising the various interests concern-

ad of the change of ownership. It will be noticed that only the plaintiff's name occurs as purchaser in the agreement of purchase. Syam contends that he had an arrangement with the plaintiff whereby the plaintiff was to buy the Parkul Tea Estate and put Syam in possession of it so that he could work it on his (Syam's) behalf, and out of the profits Syam was to pay off the purchase price. The plaintiff denies this arrangement. It should also be mentioned that Syam had sold tea from the Longucherra Tea Estate through the defendants, but the tea from the estates in which the plaintiff was interested had never previously been sold by the defendants. On 17th October 1935, Syam wrote to the defendants as follows:

We have purchased Parkul Tea Estate at rupees 2,00,000 with all teas so far made here this season. I have taken possession of the garden on 15th October 1935. The property appears to me to be quite nice.

Today I have despatched 54 chests of tea from this garden to Calcutta for sale with export rights through your firm...You will get R/R from the Bengal Central Bank, Ltd., whom I have instructed to hand it over to you. I am sending another challan of similar quantity tomorrow. Please try to realise the best rate in the market so that I can make up the capital lay out early.

4. On 18th October 1935 the Indian Tea Association wrote to the plaintiff stating that Messrs. Barry & Co. had informed them that they had sold the Parkul Tea Estate to him. On 19th October 1935 Messrs. Barry & Co. wrote to the Indian Tea Licensing Committee in Calcutta stating that the Parkul Tea Estate had been sold with all rights in the teas made or to be made in the season 1935 "to the purchaser" and the final allotment quota should be advised to the plaintiff. On 22nd October 1935 the Indian Tea Licensing Committee wrote to the plaintiff informing him what the final allotment of export quota in respect of the Parkul Tea Estate was. The Indian Tea Association is a trade association to which those who grow tea and sell tea belong. The Indian Tea Licensing Committee is a body set up under the Tea Control Act by the Government of India. The purpose of the Tea Control Act is to regulate by orders, which have the force of law, the growing of tea in India, and also the export of tea from India, this is for the purpose of keeping the price of tea at remunerative levels. Each tea estate may cultivate a certain area under tea and no more, and each estate may export or sell for export a certain fixed proportion of its crop and no more. This fixed proportion is called the export quota. Tea may be sold freely for internal consumption in India, but it may only be sold for export from any estate to the amount of the quota. The result is that the export quota is a very valuable asset and indeed the export quota rights are sometimes the subject of sale apart from the tea itself. On 24th October 1935 the plaintiff wrote to the Tea Licensing Committee noting that they had placed his name in their register as proprietor of the Parkul Tea Estate. On the same day the plaintiff wrote to the defendants a letter headed "Parkul Tea Estate" which is in these terms:

Dear Sirs,

Parkul Tea Estate.

I send you herewith invoices Nos. 21, 22,23 and D13 together with railway receipts for 51, 20 and 54 chests of tea and 9 1/2 chests of tea dust respectively for sale in Calcutta market on my account. Please acknowledge receipt and oblige.

Yours faithfully,

M.N. Mukherjee, Proprietor.

5. On 31st October 1935 the plaintiff wrote a similar letter in respect of other teas again signing himself "M. N. Mukherjee, Proprietor." On 1st November 1935 the defendants wrote back to the plaintiff as follows:

Dear Sir,

We beg to acknowledge receipt of the undernoted invoices and bill of lading which will be offered for sale under the usual sale conditions and rules and regulations of the Calcutta Tea Traders' Association.

and underneath are set out the invoices, namely,

Parkul Invoice No. 25 for 81 chests. Do. " " 24 " 46 " Do. " " D14 " 8 "

6. On the invoices the tea is stated to be consigned from the Parkul Tea Estate and despatched from the Parkul factory. The consignment is marked " Parkul tea." On 4th November 1935 the plaintiff wrote to the defendants stating that he had not received the valuation reports on the invoices mentioned and asked for that information at their earliest convenience. He again signed himself as "Proprietor." On 7th November and 13th November 1935 respectively the defendants forwarded the valuation reports, which the plaintiff had asked for, to the plaintiff himself. In the reports the tea is referred to as "Parkul." On 11th November 1935 the defendants forwarded to the plaintiff a memorandum of prices that had been realized by them on the sale of the Parkul teas. Further valuation reports were forwarded by the defendants to the plaintiff in respect of other consignments of Parkul tea on 13th November 1935. On 15th November 1935 the plaintiff describing himself again as proprietor sent railway receipt for further consignments of Parkul tea to the defendants who acknowledged them. On 18th November 1935 the defendants sent to the plaintiff memoranda of prices obtained by their sale of Parkul tea. On 20th and 21st November 1935 the defendants sent to the plaintiff further valuation reports on other consignments of Parkul tea. On 22nd November 1935 the defendants addressed a letter to the plaintiff "M. N. Mukherjee, Esqr., Proprietor, Parkul Tea Estate" which runs as follows:

Dear Sir,

We beg to enclose copy of our A/Sales No. 4681/82 T. for 134 Parkul Tea netting in all Rs. 7788-14-9 which amount we have today paid to the Bengal Central

Bank, Ltd., Calcutta.

7. The plaintiff, who as already mentioned is a director of the Bengal Central Bank, Ltd., and appears to have been in control of it, had an account with that bank headed "in current account with Mr. Manmatha Nath Mukherjee, proprietor, Parkul Tea Estate," and in that account is recorded a credit, on 22nd November 1935, for the sum of Rs. 7788-14-9, the amount being received from the defendants for the sale of tea. It is interesting to note that on the same day, namely, 22nd November 1935, the defendants wrote to Syam as follows:

Dear Sir,

We beg to enclose copy of our A/Sales No. 4681/82T. for 134 Parkul Tea netting in all Rs. 7788-14-9.

8. On the account itself it is stated that the tea was sold by order and for account of the Bengal Central Bank, Ltd., agents, Parkul Tea Estate, Sylhet. On 23rd November 1935, the defendants wrote a letter addressed to "M. N. Mukherjee, Esqr., Proprietor, Parkul Tea Estate," in these terms:

Dear Sir,

Invoice No. 26 of 89 chests.

With reference to the above invoice printed in Sale No, 24 on the 25th instant we have been in-formed by the Joint Controller, Indian Tea Licensing Committee that the Export Quota, rights available on account of Parkul Tea Estate amount to 8883 lbs. whereas the invoice in question totals 9320 lbs. leaving a balance of 437 lbs.

We shall be obliged by your letting us know whether you wish us to sell this balance for internal consumption or whether you have made arrangements to provide the extra quota to cover this amount.

9. In that letter the defendants addressed the plaintiff as "Proprietor, Parkul Tea Estate" and treated him as having the right of disposing of the tea from it, either for export or for internal consumption. Further sales of Parkul tea by the defendants took place during the remainder of 1935, and in each case the defendants accounted to the plaintiff for the sale proceeds. Again on 9th January 1936, the defendants wrote to the manager of the Bengal Central Bank acknowledging receipt of certain invoices for Parkul tea which they had received for sale, and on the 27th January 1936, they paid the proceeds into the Bengal Central Bank where the same were credited to Mr. Mukherjee's account. Again on 3rd and 7th February 1936, the defendants paid the proceeds of the sale of Parkul tea into the same bank where they were credited into the same account. After 7th February 1936, although it will be seen hereafter that the defendants sold tea from the Parkul Tea Estate, they did not pay the proceeds of the sale to the plaintiff or to his account, but they paid the proceeds directly or indirectly to Syam, and it is in respect of this sale of Parkul tea, and their paying the proceeds

to Syam instead of to the plaintiff, that these proceedings were brought.

10. It is necessary now to go back to the Tea Estate itself. When the agreement was signed and the purchase money paid, Syam, who was in possession of the Longucherra Tea Estate close by, went across to the Parkul Tea Estate and took an interest in the work going on there. Syam alleges that he did so on his own behalf as the rightful occupant of the estate under the verbal agreement that he alleges he had with the plaintiff. The plaintiff says that he never made any agreement with Syam and that Syam was simply his agent to take possession on his behalf and helped to run the garden. There is nothing in writing to support Syam's contention. It is certainly striking that Syam conducted negotiations with Messrs. Barry & Co. for the purchase of this tea estate up to a certain point and then dropped out. At the same time Mukherjee came in and eventually bought the estate. The explanation may be that Mukherjee simply used Syam as a tool, and did not use him too well. The salient facts are that there is nothing in writing about the matter; that Mukherjee bought the estate in his own name and paid for it, was let into possession of it by the sellers; that Mukherjee described himself as the proprietor of it to the defendant brokers, and sold tea in his name; that Mukherjee paid the land revenue, and certainly during October, November and December paid the expenses of the estate, Syam himself drawing money for expenses by means of cheques on Mukherjee's account at the Bengal Central Bank. I am of the opinion and find that Syam was nothing more than an agent of Mukherjee who was keeping an eye on the estate and performing certain acts of management on behalf of Mukherjee. Mukherjee certainly had the right of possession, and in my view exercised this right until about the end of 1935 through his agents. Mukherjee alleges that in December 1935 or the beginning of January 1936 Syam wrongfully disposed of 59 chests of tea sweepings and thereupon he dismissed him.

11. When Syam on 15th October 1935, took charge of the oversight of the estate he appointed a Mr. Sinha as manager and Mr. Sinha continued as manager until 27th December 1935, when one Dutta, acting under the orders of Syam took over the management from Mr. Sinha. The evidence in the present case does not deal very clearly as to what happened at this time. It does appear however from P.C. Syam's attorney's letter to the plaintiff on 10th January 1936, that the plaintiff about the end of December 1935 appointed the tea garden clerk, Srish Chandra Chaudhuri, to be his manager of the Parkul Tea Estate. The situation which arose after this is described in the judgment of the District Magistrate of Habiganj, dated 16th June 1936. Those proceedings were for criminal trespass under S.447, Penal Code. They were brought by Srish Chandra Chaudhuri against Mathura Nath Dutta and Naresh Chandra Syam. From the judgment of the Magistrate it appears that on 27th December 1935, Mathura Nath Dutta took over " charge of the garden from Sinha under the orders of Syam without the knowledge and consent of the plaintiff and that the plaintiff cancelled the authority of Syam to work as his representative on the garden and put Srish Chandra Chaudhuri, who all along had been head clerk of the garden, in charge

of the Parkul Tea Estate as manager and dismissed Mathura Nath Dutta. Mathura Nath Dutta made over charge of the garden on 5th January 1936 to Srish Chandra Chaudhuri. On 12th January 1936, Chaudhuri was acting as manager of the estate.

12. It is common ground that on or about 12th January 1936, Dutta along with Naresh Chandra Syam, the brother of P.C. Syam, came to the garden in a bus with 20 to 30 men armed with lathis and by force took possession of the garden on behalf of Syam. This party of lathials broke open the looks of the office and the manager's bungalow and forcibly entered it. Srish Chandra Chaudhuri informed the police who sent constables to maintain the peace. The Sub-divisional Officer of Habiganj visited the garden the next day and found Dutta and Naresh Chandra Syam in peaceful possession of the garden, and under S.144, Criminal P. C, the Sub-divisional Officer ordered Srish Chandra Chaudhuri not to create any disturbance. Srish Chandra Chaudhuri left the garden on 14th January 1936, as he apprehended some danger. The judgment then goes on:

The order u/s 144, Criminal P.C., was subsequently withdrawn by the S.D.O. when he saw all the documents produced by the complainants' party (that is Srish Chandra Chowdhury) in favour of their claim. Then the complainant was in a position to bring the present case of criminal trespass against the accused. Later on, at the instance of the complainant, proceedings under a. 145, Criminal P.C., have been drawn up regarding the disputed garden.

13. The Magistrate at the end of his judgment says:

It appears that the order u/s 144, Criminal V. C, passed by the S. D. O. was more or less an executive order, meant for keeping the peace. Later on, after going through the document filed by the complainant, the S. D. O. was pleased to withdraw the order u/s 144, Criminal P.C. I have given my careful consideration to the facts and circumstances of the case and considered the evidence in the light of probabilities. I have no alternative but to hold that the accused entered the garden with a number of lathials intending to intimidate the complainant who was in rightful possession of the garden and to take forcible possession of it. The bonafide claim of right, urged by the accused is a mere pretence and does not at all stand. The garden is a valuable property worth Rs. 2 lacs. The accused have joined together to defraud Mr. Mukherjee who resides in Calcutta of such a valuable property by having recourse to all sorts of rowdiness. I therefore think that the highhandedness committed by the accused calls for a deterrent sentence. Accordingly I convict them u/s 447, Penal Code and sentence them to pay a fine of Rs. 300 each. In default of the payment of fine, they shall undergo rigorous imprisonment for three weeks each.

14. This judgment and sentence was subsequently confirmed on appeal by the Sessions Judge of Sylhet on 22nd August 1936 who said:

On a consideration of the evidence in the case I am satisfied that the accused persons had no justification to behave in the outrageous manner they did, and

that they have been rightly convicted of criminal trespass. As to the sentence passed, I am clearly of opinion that it errs on the side of leniency and that the accused should have been sent to jail.

15. I am bound to say that the remarks of the learned Sessions Judge seem to me to be fully justified. We are not told the date on which the Sub-divisional Officer drew up the order u/s 144, Criminal P. C, but the Sessions Judge in his judgment says it was "little later"-that is-a little later than 12th January. Orders u/s 144 and S.145, Criminal P.C., are only intended to prevent a breach of the peace and do not decide the civil rights of the parties. N. C. Syam and Dutta purported to enter on P.C. Syam's behalf and were clearly acting on his instructions. In spite of these two judgments Syam did not hand over possession of the garden to the plaintiff until 23rd December 1936-that is after the end of the tea season of 1936. These disturbances and the criminal proceedings came to the knowledge of the Chandpore Tea Company early in 1936 and they considered that it would be unwise to complete the conveyance in favour of the plaintiff. They, thereupon, on 7th March 1936, began what is described as an interpleader suit against the plaintiff and P.C. Syam in the First Court of the Subordinate Judge of Sylhet, with a view to ascertaining whether the plaintiff or Syam was entitled to the property. The learned Subordinate Judge held that the plaintiffs were entitled to no relief in that suit and added that the plaintiffs would be properly advised to execute the deed of conveyance in favour of M. N. Mukherjee. That judgment was delivered on 27th February 1937. Syam set up his case, as I have outlined it above, in a letter to the plaintiff on 10th January 1936, and the plaintiff set up his in a letter of reply the next day. On the evidence I can come to no conclusion as to whether there was some arrangement with regard to Syam having an interest at some time or other in the Parkul Tea Estate; but I am clearly of opinion that Mukherjee and not Syam was the rightful possessor of the Parkul Tea Estate from 15th October 1935 onwards, and entitled as against the Chandpore Tea Company to all the rights of an owner in the said tea estate. On 22nd January 1936, Syam wrote to the defendants herein as follows:

Dear Sir,

Will you kindly let me know your impression about the purchase of the Parkul Tea Estate by myself on my own account financed by the Bengal Central Bank Ltd., Calcutta and oblige? I have had long discussions with you from your introduction to Mr. Cooper by Messrs. Barry & Co., of myself up to the close of the transaction. I wrote to you a latter just after taking possession of that garden on my own behalf wherein I informed you details.

16. I cannot find any reply by the defendants to that letter. They must have known from that time onwards that there was trouble about the estate, and as the Chandpore Tea Company knew of the trouble in 6th March 1936, when they started the inter-pleader proceedings I cannot help feeling that the defendants knew what had gone on or what was going on the estate from the beginning of

the trouble. That impression is confirmed by the letter which P.C. Syam wrote to the defendants on 19th February 1936. On 11th March 1936, Syam wrote to the defendants asking them if they were prepared to sell a few hundred maunds of tea in small consignments in the internal market and intimating that if they were, he would forward the consignments through the Sylhet Industrial Bank, Ltd. He also asked if they would advance him 75 per cent. of the price against the railway receipt. That letter was followed up by two similar letters dated 25th and 30th March 1936. In the letter of 30th March 1936, Syam asked the defendants to deposit 75 per cent, of the price with the Central Bank of India. On 31st March 1936, the defendants telegraphed Syam as follows : "Deposited today rupees six hundred to Central Bank of India against Parkul tea." From that date onwards, as the subsequent letters show until 10th November 1936, the defendants were selling Parkul tea for the plaintiff and accounting to him for the proceeds. In all they sold 1,20,117 lbs. of tea. This tea was apparently for consumption in India. On 24th April 1936, Mr. S. N. Sen, the plaintiff's attorney wrote to the defendants as follows:

I have been instructed by my client Mr. M, N. Mukherjee of No. 86, Clive Street, Calcutta, to address you under the following circumstances:

You are well aware that my client is the proprietor of the above tea estate. The Indian Tea Licensing Committee have issued "quotas" to my client for the above tea estate for the season 1936-37 and my client has also joined in the Indian Tea Association under the restriction scheme. As such under the law he is the only person who can produce, manufacture and sell tea of the said tea estate.

It has been brought to my client's notice by the Calcutta Tea Sale Notice appearing in the Statesman of 23rd April 1936 that you have sold 29 chests of Parkul tea. My client did not authorise you to sell such tea.

Please let me know who supplied you the Invoice of the said tea chests and under whose instructions the same have been sold.

Under these circumstances I have been instructed by my client to give you notice, which I hereby do, not to accept any Invoice of Parkul Tea Estate from anybody except from my client or to sell any such tea without his written consent.

17. The defendants forwarded that letter to Syam, and Syam's attorney, on 28th April 1936, wrote to the defendants a letter, the relevant passage of which is as follows:

My client is in possession of the said tea garden and his possession thereof has been confirmed by the criminal Court and he is working the said garden at his cost.

18. As a result, the defendants wrote to the plaintiff's attorney on 29th April 1936, as follows:

Parkul Tea Estate.

In answer to your letter dated 24th instant having reference to the sale of teas from the above garden we have to inform you that the invoices and relative documents were received from our principals to whom we are rendering sale proceeds in the usual course of events.

19. The plaintiff's attorney wrote back on 1st May 1936 to the defendants a letter of that date. On 7th May 1936, the defendants' solicitors, Messrs. Orr, Dignam & Co., wrote to the plaintiff's solicitors as follows:

Our clients understand that your client claims to be the proprietor of the above tea estate, but we are instructed that there is now pending a suit in which this matter arises for determination. Our clients however are not concerned in any way with any disputes there may be between your client and any other persons. Our clients have been advised that they are entitled to deal with the invoices of tea despatched to them for sale, and unless and until they are restrained by an order of a competent Court, they propose to carry on their business in the ordinary way. If your client feels that he is aggrieved by their action in so doing, it is for him to take such steps as he may be advised.

20. The defendants continued with the sale of Parkul Tea and appeared to have advanced Syam 75 per cent. of the value against the railway receipts. On 30th November 1936, the defendants declined to make any more advances on account of tea to Syam. On 14th December 1936, the Magistrate of Habiganj formally declared, in Miscellaneous Case No. 60 of 1936, (Manmatha Nath Mukherjee and Srish Chandra Chaudhuri v. Provat Chandra Syam and others) that:

The second party has no title to the garden. (Parkul Tea Estate) and was never in possession of it as proprietor. As there has been forcible possession and wrongful dispossession the first party should be treated to be in possession as from the date of the proceedings. I therefore declare the first party to be entitled to possession of the Parkul Tea Estate until evicted therefrom in due course of law and forbid all disturbances of possession until such eviction. I further order that under proviso 1 to Sub-section (4), Section 145, Criminal P.C., the first party be restored to possession.

21. The plaintiff appears to have sold the export quota rights of the tea from the said garden and realised the money himself. On 8th October 1937, before this suit was begun the Chandpore Tea Company, Ltd., by registered conveyance of that date conveyed the Parkul Tea Estate comprising the land and buildings on it

and all manner of rights, advantages, easements, privileges, profits and appurtenances whatsoever to the said lands tea estates and premises or any part thereof belonging or therewith held or occupied or enjoyed and all the estate right title and interest property claim and demand whatsoever of the vendor of, in, out of or upon the said premises To Have And To Hold the same unto the purchaser as from 15th October 1935 according to the nature and tenure thereof respectively subject to the payment of the revenue or rents and other

impositions (if any) reserved by the Grants or Leases under which the said plots are held

22. I find the following facts : (1) Plaintiff was in lawful possession of the Parkul Tea Estate under the agreement of 14th October 1935, with the right to grow, pluck and manufacture tea and sell as his own Parkul Tea as from 15th October 1935. (2) On or about 10th January 1936, the plaintiff was wrong-fully dispossessed of the Parkul Tea Estate by P.C. Syam through his agents who, in and by dispossessing the plaintiff, committed criminal trespass upon the said estate. (3) P.C. Syam continued in such unlawful possession of the Parkul Tea Estate until 23rd December 1936, and during that time plucked tea from the estate and manufactured it, and consigned 120,117 lbs. of such Parkul Tea with the railway receipts relative thereto, to the defendants who sold it for Rs. 30,876-6-1, received the price and paid the same, less their charges Rs. 2346-2-0, i. e., Rs. 28,530-4.1 to Syam.

23. The plaintiff contends that the tea so sold was his property; that the defendants wrongfully converted it, and he claims its value. The defendants deny that it was the plaintiff's tea and further say they committed no wrong in selling it for Syam. Now if the tea was the property of the plaintiff then the defendants are liable in law for wrongful conversion : Consolidated Co. v. Curtis (1892) 1 QB 495. The question is - was the tea sold the property of the plaintiff? The plaintiff contends that he had paid for the Parkul Tea Estate and was given possession of it by the owners, the Chandpore Tea Company, on 15th October 1935, to enable him to grow tea, manufacture it and sell it; the tea belonged to him, and no one else; the conveyance of the estate on 8th October 1937, gave him all the rights of ownership of both the estate and its produce retrospectively as and from 15th October 1935. The defendants contend that from 15th October 1935, the plaintiff may have had in law a right to possession, but in fact whilst the tea in question was being grown, plucked and manufactured and sold, plaintiff had no possession of the estate or its produce at all, nor had he the legal ownership of the estate and its produce since that they say could not in law pass and did not pass until the date of the registered conveyance - 8th October 1937; that until 8th October 1937, the ownership of the tea estate was in the Chandpore Tea Company, and if the tea was plucked by Syam as a wrongdoer, then the property in it remained in the owners - the Chandpore Tea Company - who are not parties to this suit. If the property in the Parkul Tea Estate and the right to produce did under the registered conveyance of 8th October 1937 pass to the plaintiff as and from 15th October 1935 there is an end to this part of the defendants' argument and the tea was clearly the plaintiff's.

24. It may be (though it is not necessary for the purposes of this case so to hold and I wish to make it quite clear that I do not so hold) that the registered conveyance of 8th October 1937, could not operate so as to pass the ownership in the Parkul Tea Estate to the plaintiff retrospectively, that is, on and from 15th October 1935. I will consider the position upon that supposition: the tea estate,

and in particular the tea bushes, would be the property of the Chandpore Tea Company; Syam a trespasser, with no right at all to pluck the tea, pulled tea leaves off the bushes; the leaves becoming detached from the realty were no longer immovable property whose property were they? The plaintiff, the Chandpore Tea Company, and Syam are the only parties who could be interested in the ownership of the tea. If the property in the leaves before being plucked was in the Chandpore Tea Company did it remain in them after plucking? Obviously the agreement of 14th October 1935 intended that the property in the tea leaves should be in the plaintiff so that he could sell the tea : otherwise there was no point in the agreement. Suppose the Chandpore Tea Company had attempted to assert a right to the tea as against the plaintiff? The plaintiff as a purchaser who had paid the purchase price and then been let into possession by the Chandpore Tea Company could have relied, and in my view successfully relied, on Section 53A, T. P. Act:

...the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract.

25. The property in the leaves was not in Syam, he and his servants were trespassers with no right to be on the garden or pluck tea or prepare it or do anything at all in the garden. Syam acquired no rights at all to the property in the tea either in the green leaf or when manufactured. The only conclusion is that the tea when plucked was the property of the plaintiff. Syam by further trespass, such as the manufacturing of the green leaf into black tea, could not deprive the plaintiff of that property; the leaves, though dried, shrunk and blackened, remained tea "the same thing" as Mr. Sayers, senior partner of the defendant firm put it in cross-examination in answer to question 330, and they were clearly "Parkul Tea" and were sold as such. In my opinion the tea in question was the property of the plaintiff and wrongfully converted by the defendants.

26. To what damages is the plaintiff entitled? The learned Judge has awarded the plaintiff the sale price of the tea less (by agreement) the defendants' charges for selling it. The defendants' contention is that as Syam plucked, manufactured, and transported the tea to them for sale, the cost of these acts was saved to the plaintiff and the damages awarded should be reduced by this amount. The defendants gave evidence that the value of the green tea leaves was Rs. 3-8-0 per maund; that four maunds of green leaves dried into one maund of black tea, which would give an equivalent price of two annas nine pies per pound for green leaves. Further evidence was given by the defendants that the cost of production of black tea in a similar estate was at least five annas per pound. The average price obtained for the Parkul tea the defendants sold was about four annas six pies per pound. The defendants therefore suggest that Syam was producing it at a loss, and that the plaintiffs have been saved that loss. Alternatively the

defendants say that the difference between the price the tea was sold for and the price of the green leaf, that is four annas eight pies less two annas nine pies is due to Syam's efforts and expenditure and that they should be given credit for it. As regards the former suggestion I decline to believe that Syam lost money; he obviously did not invade the tea garden and remain there pillaging it to lose money. As regards both the first and second suggestions, it is improbable that Syam once having entered the garden did not use up the stores of fuel, etc. he found there. Such tea as Syam produced was from the plaintiff's bushes and was dried in the plaintiff's factory. Syam may have paid the coolies and workmen's wages and the cost of transporting the tea to Calcutta, but I doubt if he did anything else. How much this amounted to it is impossible to say upon the evidence. I do not accept his statement that during 1936 he paid Rs. 40,000 for the working of the garden. He was short of money as his letters to the defendants show and had put to it to find coolies' wages. The defendants were making him advances on account of the tea in order to keep the garden going. In any event what he did as regards tea production in that garden was through criminal trespass in deliberate violation of the criminal law, and he could take no credit for it.

27. Syam was in much worse case than the defendant in *Martin v. Porter* (1839) 5 M & W 351 since his trespasses were deliberate and criminal whereas Porter's trespasses were ordinary trespasses which may or may not have been inadvertent. Syam was far removed from the position of the defendant in *Wood v. Morewood* (1841) 3 QB 440, where in an action for trover for coal wrongfully got and raised, Baron Parke directed the jury that if the defendant was not guilty of fraud or negligence but had acted fairly and honestly in the full belief that he had a right to do what he did, they might give the defendant credit for the cost of raising the coal; which the jury did. See Lord Macnaghten's judgment in *Peruvian Guano Co. v. Drefus Brothers & Co.* 1892 AC 166. I am of the opinion that Syam could not claim this mitigation that the defendants now claim. The question here is can the defendants claim some mitigation of damage in respect of, and in so far as, Syam's expenditure is proved? If I were bound to answer this question I should do so in the negative.

28. The defendants had previously acknowledged the plaintiff as the owner of the estate and the tea produced on it; they had sold Parkul tea for the plaintiff and rendered accounts to him for it. The defendants knew--putting it mildly--that there was a doubt as to Syam's title to the garden and its tea; if they had enquired of another Calcutta firm, Messrs Barry & Co., they would have found that Barrya had sold the Parkul Estate for the Chandpore Tea Company to the plaintiff; if the defendants had enquired of the Tea Licensing Committee in Calcutta (a public body set up under statute) they would have learned that this body was recognizing the plaintiff as the owner of the Parkul Tea Estate by issuing export quotas in respect of it to him. Again, if they had made some enquiries in Assam (not a difficult matter for anyone in the tea trade in Calcutta) they would have learned of the proceedings against Syam's agents for criminal

trespass. Finally the defendants were warned in the clearest possible terms by the plaintiff's letter of 24th April 1936, against selling Parkul tea for Syam. The defendants knew the dangers and yet persisted in selling the plaintiff's tea for Syam land advancing Syam money before the tea was sold. The defendants were grossly negligent in the matter, and partisan in Syam's favour. In my view they would not be entitled to the benefit of the direction in law which Baron Parke gave to the jury in *Wood v. Morewood* (1841) 3 QB 440 cited above. If and in so far as it is necessary for me to hold, I hold that the defendants are not entitled to the benefit of Baron Parke's direction in *Wood v. Morewood* (1841) 3 QB 440 in mitigation of damages. Be that as it may, it seems to me that the matter is concluded by a pronouncement by Lord Sankey L. C. in *Banco De Portugal v. Waterlow & Sons, Ltd.* 1932 AC 452 :

It was similarly stated by Lord Blackburn in the House of Lords in *Livingston v. Rawyards Coal Co.* (1880) 5 AC 25 in these words: "Where any injury is to be compensated by damages, in settling the sum of money to be given for reparation of damages you should as nearly as possible get at that sum of money which will put the party who has been injured, or who has suffered, in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation." There is no doubt as to the law....

29. Applying that principle to this case, the wrong for which the plaintiff is now getting compensation or reparation is the sale of each of those parcels of tea by the defendants. Immediately before each sale the plaintiff has the property in the tea and was entitled to the parcel about to be sold. That the tea had been plucked, prepared and transported by the trespasser Syam did not deprive the plaintiff of his right to the tea or its value; the tea was his and he owed nobody anything in respect of it. By the sale of the tea the plaintiff was deprived of its value which was the sale price obtained. The total of such sale price was Rs. 30,876-6-1. The plaintiff has allowed the defendants their commission on the sales, namely Rs. 2346-2-0. Thus the plaintiff is entitled to the damages the learned Judge has awarded, namely Rs. 28,530-4-1. The appeal is dismissed with costs.

Lort-Williams, J.

30. I agree. I desire to add only that I am satisfied that there was no agreement between the plaintiff and Syam such as Syam alleged. If any agreement had been made most certainly it would have been reduced into writing as was the agreement to purchase the Longuchera Tea Estate.