
(1952) 04 PAT CK 0009
In the Patna High Court
Case No : A.F.A.D. No. 2019 of 1950

Gaurishankarji and Another	Vs	APPELLANT
Radha Gobind Singh		RESPONDENT

Date of Decision : 17-04-1952

Acts Referred:

Citation : AIR 1952 Patna 387

Hon'ble Judges : Rai, J;Jamuar, J

Bench : Division Bench

Advocate : B.C. De and R. Choudhury, for the Appellant; S.C. Mazumdar and S.K. Mazumdar, for the Respondent

Final Decision : Dismissed

Judgement

Jamuar, J.—This is an appeal from a judgment and decree of the Additional District Judge of Purulia, dated the 7th August 1950, decreeing the plaintiff's suit and thus reversing a decision of the Additional Subordinate Judge of Purulia, dated the 11th September 1948, by which the suit had been dismissed.

2. The defendants are the appellants. The plaintiff is mukarraridar of village Kapali. He had granted a darmukarrari lease to Ramdasji, the father of the defendants, by executing a deed on the 22nd December 1918, with respect to 2100 bighas odd of land at an annual rental of Rs. 530/- besides cess. It is the plaintiff's case that the defendants have been contravening certain terms of the darmukarrari lease. The suit was, therefore, brought for a declaration that the defendants have no right to the mines, minerals and sub-soil in the lands given in darmukarrari, and for the issue of a permanent injunction restraining them from manufacturing bricks and making brick kilns and Erne kilns on the land for commercial purposes and from taking away stones, moram etc., by removing the same and selling them. There was a further claim for damages in respect of the bricks, stone chips, etc., already removed from the land and sold.

3. The defendants' case was that in their darmukarrari lease, there is an express

grant made to the effect that they have the unrestricted right of manufacturing bricks and preparing brick kilns, lime kilns etc., for commercial purposes. They alleged that they had been preparing bricks in this manner since 1919, and had been selling them to the Tatas. They also claimed a right to collect stones, moram etc. and to work the same by quarries and to appropriate them.

4. The learned Additional Subordinate Judge, who tried the suit, held that the defendants had been preparing bricks on the land and selling them not since the year 1919, as alleged by them, but since some four years prior to the institution of the suit. The learned Additional Subordinate Judge further held that, under the terms of the darmukarrari lease, the defendants have a right to manufacture bricks for commercial purposes; but the claim of the defendants that they have a right to collect and sell stone chips and moram was denied. On these findings, the learned Additional Subordinate Judge dismissed the suit.

5. On appeal to the Court below, the learned Additional District Judge decreed the suit declaring the plaintiff's right to the mines, minerals and sub-soil in the property in dispute, and permanently restraining the defendants from manufacturing bricks or preparing brick kilns or lime kilns on the land for commercial purposes or from taking away stone, moram, etc. by removing the same. He further ordered that the amount of damage suffered by the plaintiff on account of the defendants having manufactured bricks for commercial purposes and having sold stones and moram if any, shall be determined in a subsequent proceeding.

6. The only point which was argued in this appeal was whether, on the terms of the darmukarrari lease granted to the defendants, the defendants can claim a right to manufacture bricks upon the land leased out to them for commercial purposes. Obviously, this question must depend upon the interpretation of the lease itself.

7. The lease is in, Bengali language; but we have before us a translation of it in English. The correctness of this translation is not challenged. The relevant portions of this document are these. One passage is as follows: "That you, together with your sons, grandsons, etc., and representatives in succession, shall enjoy and possess the entire leasehold land, as you like, by holding khas possession thereof, by settling the same with tenants, by reclaiming land (?) the "patis" lands to culturable lands, by constructing kutcha and pucca houses, well, tanks, bandh, bricks, brick kiln, lime kiln, etc., in the leasehold land as you like or by getting the same done (by others) and by installing machinery and factory houses, according to necessity and be competent to gift away and sell the same according to your sweet will".

8. At the end of the document, however, the following condition is imposed: "You (the lessee) shall have no concern with the underground minerals, stones, etc., of the leasehold land". Mr. B. C. De, for the appellants, argued that in the absence of a definite restriction imposed upon the lessee forbidding him from

manufacturing bricks for commercial purposes, the plaintiff can have no right to restrain the lessee or his successors in interest from doing so and selling bricks to persons residing even outside the premises leased. He urged that the lease granted to the lessee the right to use the land demised in whatever manner he chose, including the right to construct brick kilns, lime kilns etc. In that view of the matter, he contended, the appellants are entitled to prepare bricks on the leasehold property, and sell them to the Tatas as they are doing.

9. We have read and re-read the document constituting the lease, and we have to decide the question as to what is the true interpretation of the terms of the lease. Bearing in mind the law regarding sub-soil rights, the right of a tenant to make bricks for his own domestic or agricultural purposes, that is, for his own use on his tenure or holding, cannot be questioned; but it is a different thing for a tenure-holder to claim the right to dig earth for the manufacture of bricks and to take them away and sell them to strangers : this the tenure-holder cannot claim to do as a matter of right. In the case of *Purnendu Narayan Singh Vs. Narendra Nath Chakravarty and Others*, the law was stated as follows:

"The legal position with respect to sub-soil rights in a tenure is that these will be assumed not have been granted unless an express grant is made.....Of course, the right of a tenant to make bricks for his own domestic or agricultural purposes, i.e., for his "own use on his tenure or holding, is not questioned; and a right of quarrying, it seems, can be acquired by adverse possession: vide "*BHUPENDRA NARAYAN v. RAJESWAR PROSAD*" 59 Cal. 80 (PC). But unless the tenant has acquired by grant or by adverse possession a right of ownership in the sub-soil, the digging of earth for bricks to be taken away from the area of the tenure and disposed of to strangers, is an appropriation of the corpus of the grant which in India a tenure-holder is not entitled to make".

That case referred to the case of "*KUSUM KAMINI v. JAGDISH CHANDRA*" 20 Pat 96 in which it was also pointed out that, apart from statute, a lease which does not in terms give to the lessee rights in the sub-soil gives to the latter no proprietary right in the soil. Construing the lease in the present case, in my judgment the lessee had not acquired any right in the sub-soil on the terms of the lease. The lessee, not having been given the proprietary right in the sub-soil, cannot claim any right to dig the sub-soil, and to make use of it in whatever manner he likes.

10. Mr. De also contended that, if there was any ambiguity in the interpretation of the lease, it should be interpreted in a way favourable to the lessee, and in this connection he referred to paragraph 327 at page 260, Volume 10, of Halsbury's Laws of England (Hailsham Edition). The paragraph commences with the following words : "If a doubt arises upon the construction of a grant and the doubt can be removed by construing the deed adversely to the grantor, this will be done. The words of a deed, executed for valuable consideration are to be construed, as far as they properly may, in favour of the grantee". Reading the document in question, I do not think that there is any question of any doubt

arising in its "construction or in the construction of the intention of the parties to the lease. If the appellants are given the unrestricted right to dig the sub-soil and prepare bricks for commercial purposes, in course of time the surface of the property demised will be subjected to so many excavations that the property will become entirely useless, and thereafter the lessee may abandon or surrender the property causing irreparable damage to the lessor. This could never have been the intention of the parties at the time of the grant of the lease. As was pointed out by their Lordships of the Judicial Committee in the case of "GIRIDHARI SINGH v. MEGH LAL" 45 Cal 87 (PC) :

"It must be borne in mind also that the essential characteristic of a lease is that the subject is one which is occupied and enjoyed and the corpus of which does not in the nature of things and by reason of the user disappear".

Where a person wishes to take lease of a piece of land for the purpose of making bricks, and that too for commercial purposes, such a term should be the subject of a special agreement between the parties. The lease should be read as a whole, so that no part is inconsistent with the other, and I am of the opinion that, on the true construction of the lease, the lessee had not been given any right in the underground minerals, stones etc. In the same case before their Lordships of the Privy Council, it was also pointed out that it must be presumed that the mineral rights remain in the zamindar, in the absence of proof that he had parted with them.

11. In view of all these considerations, I am of the opinion that the learned Additional District Judge was right in his conclusion that the right to make bricks, brick kilns and lime kilns as granted in the lease is limited to the making of bricks and brick kilns for domestic purposes, that is, for use in the construction of houses on the leased land, and that it is not an unrestricted or unlimited right to manufacture bricks for commercial purposes and to take them out of the land and dispose them of to strangers.

12. I would accordingly dismiss this appeal with costs.

Rai, J.

13. I agree.