(2010) 03 OHC CK 0083

In the Orissa High Court

Jagannath Minerals and Another — APPELLANT

Vs

State of Orissa and Others — RESPONDENT

Date of Decision : 23-03-2010

Acts Referred:

- Constitution of India, 1950 — Article 226
- General Clauses Act, 1897 — Section 3
- Mines and Minerals (Development and Regulation) Act, 1957 — Section 30
- Partnership Act, 1932 — Section 31, 39, 4, 42, 5
- Registration Act, 1908 — Section 17, 90
- Transfer of Property Act, 1882 — Section 105, 108, 2, 3

Citation : (2010) 109 CLT 782

Hon'ble Judges : I.M. Quddusi, Acting C.J.;Sanju Panda, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sanju Panda, J.—In this writ application, the Petitioners have challenged the revocation of Mining Lease transfer Order Dated 6.2.2007 passed by the Deputy Secretary to Government of Orissa, Department of Steel & Mines & cancellation of removal permission for iron ore (vide Annexure-14) & Issuance of working permission in favour of a dead person, namely, Late Manoranjan Das (vide Annexure-16).

2. The facts leading to this case are as follows:

A mining lease in respect of an area measuring Ac.11.533 hects in village Deojhar in the district of Keonjhar for a period of 20 years was to be granted in favour of one Manoranjan Das. Due to paucity of funds, on 18.3.1997 he entered into an agreement with Deepak Kumar Rana, Managing Partner of Petitioner No. 1 firm to transfer the said mining lease & also executed a General Power of Attorney in his favour. Accordingly, on the said lease being granted in favour of Manoranjan Das, on 6.7.1998 Deepak Kumar Rana as the Power of Attorney Holder of Manoranjan Das executed the mining lease deed with the Collector, Keonjhar to carry on the mining operation. In the said agreement, they further agreed that Deepak Kumar Rana will exercise all the leasehold rights on his own & the Power of Attorney shall not be revoked till the lease was transferred. Thereafter, by virtue of a deed of partnership dated 16.4.1999, Manoranjan Das & Deepak Kumar Rana became partners & created a partnership firm under the name & style of M/s. Jagannath Minerals. It was agreed therein that Deepak Kumar Rana would be the managing partner of the said firm & if Manoranjan Das retired, neither he nor his heirs, successors & assigns could claim further continuance of partnership & the lease would continue in the name of the firm & Deepak Kumar Rana would be at liberty to take anybody as partner in the firm (Annexure 7).

In pursuance of formation of the partnership firm between Manoranjan Das & Deepak Kumar Rana, a letter was issued to the authority for transfer of the mining lease in the district of Keonjhar in favour of M/s. Jagannath Minerals wherein it was clearly indicated that Deepak Kumar Rana was the Managing Partner. A copy of the partnership deed was also enclosed for the purpose of transfer. The State Government on 9.5.2001 transferred the mining lease in favour of the partnership firm by granting permission under Rule 37 of the Mineral Concession Rules. Therefore, the transfer deed was executed in Form ''O'' on 4.8.2001 between the Collector, Keonjhar & Manoranjan Das as transferor & Petitioner No. 1 as transferee, but the said document was not registered.

While the matter stood thus, Manoranjan Das decided to retire from the partnership & to that effect, he issued a letter on 21.3.2005 indicating therein that he cancelled the General Power of Attorney executed on 18.3.1997 in favour of Deepak Kumar Rana. Petitioner No. 1 also filed Civil Suit No. 16 of 2005 before the Learned Civil Judge (Senior Division), Champua with the following prayers:

(a) to restrain the Defendant & any other person claiming under him from entering into the mines & from obstructing the Petitioner from smooth operation of the said mines by virtue of the permanent injunction.

(b) to restrain the Defendant from revoking the power of attorney dated 18.3.1997 & if at all during the meantime the Defendant No. 1 revoked the said power of attorney, then the same may be declared as inoperative, void, abintio by virtue of mandatory injunction & other consequential relief.

During pendency of the said suit, Manoranjan Das died on 6.5.2005. Therefore, the suit became infructuous. Removal permission granted in favour of the Petitioners was stopped by the Government on 31.3.2005.

3. Challenging the order passed by Opp. Party No. 4, the Petitioners filed W.P.(C) No. 8152 of 2005. On 2.9.2005 the said writ application was dismissed for non-prosecution. The Petitioners were not aware of that order. When they came to Cuttack on 25.1.2007 & verified the record, they came to know about the same.

4. As Manoranjan Das retired & also died, Deepak Kumar Rana being a single person approached his father-in-law & brother in-law to become partners in M/s.

Jagannath Minerals to help him to run the mining business. They in their turn, informed that they were ready & willing to invest & help him without being partners of the firm & insisted Petitioner No. 2 who is the wife of Deepak Kumar Rana to become partner of the firm. Accordingly, partnership deed was drafted & executed at Cuttack & the firm asked permission from the Government for operation of the mining, At this juncture, the Petitioners came to learn that mining lease which was granted in the name of M/s. Jagannath Minerals had already been revoked & was going to be transferred in favour of Opp. Party Nos. 5 to 9 who are the legal heirs of Manoranjan Das. Though the Petitioners under the RTI Act applied for a copy of the said revocation order, they did not get it. Therefore, they were constrained to file Civil Suit No. 41 of 2007 in the Court of the Learned Civil Judge (Senior Division), First Court, Cuttack with the following prayers:

(i) Let it be declared that M/s. Jagannath Minerals is the lessee in respect of Deojhar Ore Mines situated in village Deojhar under Joda Police Station in the district of Keonjhar.

(ii) Let it be declared that the revocation, if any, of the said lease deed is illegal & void & accordingly the same may be set aside.

(iii) Let it be declared that Plaintiff Nos.1 & 2 being partners of M/s. Jagannath Minerals are the lease holder of the said mines.

(iv) Defendant Nos. 1 to 4 be permanently injucted to transfer the aforesaid lease in favour of Defendant No. 5 & other consequential relief.

On 7.2.2007, the Learned Civil Judge (Senior Division), First Court, Cuttack directed the parties to maintain status quo.

5. While the matter stood thus, on 20.6.2007 the State Government issued working permission to Manoranjan Das, who was dead. The said permission was granted for thirty days from the date of issuance of the letter. As the legal heirs of Manoranjan Das tried to carry on mining operation, the Petitioners filed another interim application, i.e., I.A. No. 268 of 2007, in Civil Suit No. 41 of 2007. As the Court did not pass any order, the Petitioners filed F.A.O. No. 91 of 2007 before the Learned District Judge, Cuttack. However, the first appeal was dismissed against which the Petitioners filed W.P.(C) No. 9698 of 2007 before this Court which has already been disposed of on 1.10.2007.

6. Learned Counsel for the Petitioners submitted that in view of the above, finding no other alternative remedy, the Petitioners challenged the revocation Order Dated 6.2.2007 passed by the Government stating therein that as per the application for transfer of mining lease & execution of transfer deed in Form ''O'', right, title & interest in the mining lease will be transferred to the transferee. The transfer deed being a non-testamentary instrument, which authorizes the assign/ transferee right, title & interest in the immovable property, the same is not compulsorily registrable u/s 17(2)(vii) of the Registration Act. However, he

further submitted that if the transfer/assignment dated 4.8.2001, is construed to be a grant, the same is exempted from registration u/s 90 of the Registration Act. Since the mining lease had already been transferred to M/s. Jagannath Minerals, it was not open to the Government to revoke the said permission under Rule 37 of the Mineral Concession Rules. The legal heirs of Manorajnan Das cannot be entitled to operate the mines on the basis of the working permission granted in favour of a dead person. Since the suit was not a speedy & efficacious remedy, during pendency of the writ application the Petitioners withdrew Civil Suit No. 41 of 2007. Hence, this Court may interfere with the impugned order & quash the same in exercise of its jurisdiction under Article 226 of the Constitution of India.

7. Opp. Party Nos.6 to 10, who are the legal heirs of Manoranjan Das, appeared & filed their counter affidavit. They have taken a specific stand that the order impugned is revisable. Therefore, the writ application is not maintainable as alternative remedy is available & the claim of the Petitioners that the transfer of mining lease from Manoranjan Das to the erstwhile M/s. Jagannath Minerals is a Government grant & does not require any registration is not correct. Rather the transfer is a private transaction basing on which the Government may, if satisfied, sanction a grant, but there is a clear instruction from the Government that such an instrument need be registered. On the decision of Manoranjan Das regarding withdrawal of the transfer of lease so made in favour of M/s. Jagannath Minerals, the execution of Form ''O'' has no existence in the eye of law. The present firm is not the same firm in whose favour the transfer lease was sought because after the death of Manoranjan Das, the firm did not exist as the same was constituted by two partners, i.e., Manoranjan Das & Deepak Kumar Rana only. Since Manoranjan Das decided not to transfer the lease to M/s. Jagannath Minerals before registration of the deed, the same document lost its force & could not have been utilized even otherwise. Further, on the death of Manoranjan Das, the lease automatically stood transferred to his legal representatives, as the mining lease deed executed between the State & Manoranjan Das was for a period of 20 years. Therefore, there is no illegality in the revocation order passed by the authority. The mining lease remained with Manoranjan Das & after his death as per the terms & conditions of the lease read with the provisions contained in the Mineral Concession Rules, 1960, the mines vested with the legal representatives of Manoranjan Das by way of inheritance. The General Power of Attorney was granted in favour of Deepak Kumar Rana with all bona fide intention & since, he misutilised the power given to him, the said power was cancelled. Due to such misutilisation & abnormal behaviour of Deepak Kumar Rana Manoranjan Das did not intend to part with the lease & keep the mines under the said partnership firm. They specifically denied the fact that due to ill-health of Manoranjan Das, the transfer deed in Form ''O'' could not be registered before the Sub Registrar, Keonjhar. Rather, Manoranjan Das was aware of the clandestine activities of Deepak Kumar Rana & compelled not to transfer the lease & also to retire from the firm. He also cancelled the General Power of

Attorney. Though he executed the deed for transfer of mining lease in form ''O'', since the transfer was a property transfer, mere execution of Form ''O'' did not get the property transferred; it required registration. Now after retirement of Manoranjan Das, the partnership firm M/s. Jagannath Minerals has lost its existence. The present Petitioners with an oblique motive to grab the property in question constituted the said firm & they have no locus standi to seek any permission to operate the mines. On 12.6.2008, their application for mining operation was rejected by the authority. Having not challenged the said order, the Petitioners are not entitled to any relief in this writ application, which is not maintainable. In view of the terms & conditions contained in the lease read with the proviso to Section 30 of the Mines & Minerals (Development & Regulation) Act, 1957 & Rule 25-A of the Mineral Concession Rules, 1960, the legal representatives of Manoranjan Das automatically stepped into the shoes of their predecessor & rightly operated the mines. Hence, the impugned order need not be interfered with by this Court.

8. The State also filed its counter-affidavit. It has taken a stand that the dispute between the two private individuals regarding the terms & conditions of the partnership deed executed between them being a disputed question of fact, adjudication thereof in this writ application is not warranted. The same is to be adjudicated by a Civil Court. (C.S. No. 41 of 2007 as well as W.P.(C) No. 9896 of 2007 were withdrawn by October, 2007). The mining lease for iron ore was granted in favour of Manoranjan Das on 6.7.1998 in respect of an area measuring Act 1.533 hects in village Deojhar in the district of Keonjhar for a period of 20 years. After the lease was granted, Manoranjan Das entered into an agreement with Deepak Kumar Rana on 16.4.1999 for constituting a partnership firm, namely, M/s. Jagannath Minerals. Later on Manoranjan Das submitted an application to the Government on 28.4.1999 for transfer of the lease in question in favour of the said firm. The said application was allowed on 9.5.2001. The Government issued a direction to Manoranjan Das for execution & registration of transfer lease deed. But before registration of the transfer lease deed, Manoranjan Das expired. As a result, the same could not be registered & the transaction was not completed. Before that, Manoranjan Das also intimated the Government not to transfer the lease in favour of M/s. Jagannath Minerals. In view of the said facts & circumstances, the Government vide its Proceeding No. 1324 dated 6.2.2007 revoked the Order Dated 9.5.2001 by which the transfer of mining lease was allowed. As per Rule 37 -A of the Mineral Concession Rules the transfer of lease allowed by the Government should be executed in Model Form ''O'' within three months from the date of the order or within the time extended by the Government. Since the original lessee died prior to the date of transfer & registration of the transfer lease deed in prescribed format & the partnership was not in existence, the question of transfer could not be taken place. Therefore, the lessee has no right & the writ application is liable to be dismissed.

9. In view of the. above rival submissions of the parties, this Court has to determine in this writ application -

(i) Whether any alternative remedy is available to the Petitioners?

(ii) Whether the partnership firm M/s. Jagannath Minerals did exist & continue on the retirement/after death of the other partner Manoranjan Das?

(iii) Whether the mining lease is a lease or grant & such transfer needs registration? &

(iv) Since the lease was in favour of Manoranjan Das & was not transferred to any partnership firm, whether the Petitioners have no locus standi to claim any relief to continue the mining operation as they have not obtained the lease & the transfer deed was not registered?

10. The Learned Counsel for the Opp. Parties submitted that the writ application is not maintainable as an alternative remedy by way of revision u/s 30 of the Mines & Minerals (Development & Regulation) Act, 1957 is available to the Petitioners. In support of his contention, he cited the decision reported in Central Coalfields Ltd. Vs. State of Jharkhand and Others, wherein it has been held that relief under Article 226 of the Constitution of India is not available when an alternative remedy is available. However, though any order passed by the authority is revisable as per Section 30 of the Mines & Minerals (Development & Regulation) Act, 1957 & the lease was not transferred & the Petitioners have filed this writ application to continue the mining operation, since there is a dispute regarding continuation of mining operation between the Petitioners & the legal representatives of the original leaseholder, this Court entertains the writ application to consider the questions of law formulated above.

11. Now, it has to be determined in this writ application whether the partnership firm M/s. Jagannath Minerals did exist & continue on the retirement after death of the other partner Manoranjan Das & whether the mining lease is a lease or grant such transfer needs registration. In the case of Abbashbbai K. Golwala v. R.G. Shah and Ors. reported in AIR 1988 Bombay 187, it was held that when there was an express provision under the Clause of partnership deed which enabled a remaining partner to continue the business in partnership with other parties also, i.e., by taking new partners into the partnership, then on retirement of all the other partner but one that remaining partner would be entitled to continue the business of the firm on his making payments to the retiring partners as provided in the clauses of partnership deed. The said decision was rendered by the Bombay High Court on the Clauses in the partnership deed. In that case, the partnership was between five partners who had 20% share each in the business. The relevant clauses of the partnership deed were as follows:

2. The partnership with the, change in the constitution of the firm, has commenced the partnership business on & from the 1 at day of January, 1971 & shall continue unless dissolved or determined by & with the mutual consent of all the partners provided that any of the parties hereto may retire from the partnership after giving to the others a previous notice in writing of not less than three calendar months of his intention to retire from the partnership & he shall

be deemed to have retired from the partnership of the expiration of the period of the said notice & remaining partners shall be entitled to continue to carry on the said business in partnership among themselves or with any other person or persons.

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18. In the case of retirement of any partners, as provided for herein he shall be paid the amount standing to his credit in the books of account of the partnership & his proportionate share in the goodwill & profits of the firm up to the date of his retirement within six months from the date of his retirement. If in case there is a loss for the said period the same shall also be likewise deducted from the amount standing to the credit of the retiring partner.

19. Death, retirement or insolvency of any partner shall not be continued between the remaining partners. In such a case, the amount standing to the credit of the deceased, retiring or insolvent partner together with the share of the goodwill & the profit up to the date of his death, retirement or insolvency shall be paid to him or to his legal heirs & if there is any loss then proportionate share of loss up to the date of death, retirement or insolvency shall be deducted from the amount standing to his credit.

In view of the clause for taking partners into partnership, the person who remains, therefore, can continue the business in partnership by taking other persons as partners. The business of the firm may be continued even when all the partners but one retires. It was held by the Court that on retirement of the other partners the remaining partner is entitled to continue the said business. In the case of Commissioner of Income Tax, Madhya Pradesh, Nagpur and Bhandara Vs. Seth Govindram Sugar Mills, it was held as follows:

A combined reading of Sections 42 & 31 of the Partnership Act, according to the Learned Counsel, would lead to the only conclusion that two partners of a firm could by agreement induct a third person into the partnership after the death of one of them.

7. There is a fallacy in this argument. Partnership, u/s 4 of the Partnership Act, is the relation between person''s who have agreed to share the profits of a business carried on by all or any of them acting for all. Section 5 of the said Act says that the relation of partnership arises from contract & not from status. The fundamental principle of partnership, therefore, is that the relation of partnership arises out of contract & out of status. To accept the argument of the Learned Counsel is to negative the basic principle of law of partnership. Section 42 can be interpreted without doing violence either to the language used or to the said basic principle. Section 42(c) of the Partnership Act can appropriately be applied to a partnership where there are more than two partners. If one of them dies, the firm is dissolved; but if there is a contract to the contrary, the surviving partners will continue the firm. On the other hand, if one of the two partners of a firm dies, the firm automatically comes to an end & thereafter, there is no

partnership for a third party to be introduced therein & therefore, there is no scope for applying clause (c) of Section 42 to such a situation. It may be that pursuant to the wishes or the directions of the deceased partner the surviving partner may enter into a new partnership with the heir of the deceased partner, but that would constitute a new partnership. In this light Section 31 of the Partnership Act falls in line with Section 42 thereof. That Section only recognizes the validity of a contract between the partners to introduce a third party without the consent of all the existing partners: it presupposes the subsistence of a partnership: it does not apply to a partnership of two partners which is dissolved by the death of one of them, for in that event there is no partnership at all for any new partner to be inducted into it without the consent of others:

In the case of Erach F.D. Mehta Vs. Minoo F.D. Mehta, , the Apex Court has held that when the partnership consisted of only two partners & one partner agreed to retire, there can be no doubt that as per the terms of agreement one of the partners will retire amounts to dissolution of the partnership. In the said case, the relevant terms of the deed of partnership were as follows:

3. The duration of the partnership shall be at will.

xxx xx xxx 15. All disputes & questions whatsoever which shall either during the partnership or afterwards arise between the partners or between one of them & the personal representatives of the other or between their respective personal representatives touching these presents or the interpretation of this deed or the construction of the application thereof or any clause of thing herein contained or any account valuation or division of assets debts or liabilities to be made hereunder or as to any act deed or commission of either partner or as to any act which ought to be done by the partners in dispute or as to any other matter in any way relating to the partnership business or the affairs & transactions thereof or the rights, duties or liabilities of either partner under these presents shall be referred to two Arbitrators one to be appointed by each party to the difference in accordance with & subject to the provisions of the Indian Arbitration Act, or any statutory modification thereof for the time being in force.

In the present case, the following clauses of the partnership agreement are relevant for the purpose of this writ application:

4. That in view of reasons explained earlier, the 2nd party shall function as managing Partner of firm, look after the day-to-day mining operation, all applications necessary to be made to the statutory authorities, seeking permission either for extraction or for transportation shall be under the signature of the 2nd party....

xxx xxx xxx 9....That since the Mining lease now stands in the personal name of 1st party, necessary applications to the competent authorities shall be made by the 1st party on the same day on the date of execution of this Deed & the process of transfer of mining lease in the name of the afore stated firm shall be made completed as quickly as possible....

10. That in the event the 1st party desirous to retire he will have to express such of his desire in writing & communication the same to the 2nd party by a Regd. Letter 30 days prior to the date of his proposed retirement. So, that within the interregnum period of 30 days all accounts can be settled. In the event the 1st party retires he shall have, neither he nor any of his heirs/successors/assigns can claim further continuance in partnership & the mining lease which on transfers on the name of firm shall continue in the name of firm. Neither the 1st party nor his heirs/successors/assigns shall have any claim over the same. The 2nd party shall be at liberty to take anybody as a partner to the firm.

11. That all disputes arising out of partnership deed & between the partners enforce only shall be resolved by way of Arbitration pursuant to the arbitration law, for the time being in force-

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12. Considering the above clauses of the partnership agreement on the touch-stone of the decisions as discussed in the above paragraph, in plain & simple language, a partnership means a contract of two or more competent persons to place their money, effects, labour & skill, or some or all of them, in lawful commerce or business & to divide the profit & bear the loss in certain proportions. Therefore, from the said meaning, it appears that partnership is a relation between persons who have agreed to share the profit of business to be carried on by all or any of them acting for all. The said relation subsists between the persons who have agreed to combine their profit, labour, skill & to share the profit thereof between them. Therefore, from the above discussion, it cannot be said that a partnership would continue by only one person if the partnership was formed between two persons & out of ''them one declared his intention to retire or withdraw himself from the said partnership.

In the case of M/s. V.H. Patel and Company and Others Vs. Hirubhai Himabhai Patel and Others, . the Apex Court while considering the provisions u/s 39 of the Partnership Act, 1932 held that breach of agreement & conduct destructive of mutual confidence, give rise to a ground for dissolution of a partnership. The factual background of the said case is that the dispute between the parties originated on the basis whether one or other partner had not retired from, partnership or as to the rights arising in relation to trademarks or otherwise, Still when there was no mutual trust between the parties & the relationship became so strained that it is impossible to carry on the business as partners, it was certainly open to them to claim dissolution & such a question could be adjudicated. In the said case, the Apex Court held as follows:

If there has been breach of agreement & conduct is destructive of mutual confidence certainly such conduct can give rise to a ground for dissolution of the partnership. White mere disagreement or quarrel arising from impropriety of partners is not sufficient ground for dissolution, interference should not be refused where it is shown to the satisfaction of the adjudicating authority that the conduct of a partner has been such that it is not reasonably practicable for other partners to carry on the business in partnership, For instance, dissolution should be ordered if it is shown that the conduct of a partner has resulted in destruction of mutual trust or confidence which is the very basis for'' proper conduct of partnership....Dissolution will arise where it appears that the state of feelings & conduct of the partners have been such that business cannot be continued with advantage to either party.

In the case of M. Vedachala Mudaliar and Anr. v. Rangaraju Naidu reported in AIR 1960 Mad 457, it was held that when there are more than two partners in a firm & one of the partners severs his connection with the business & the other partners continue the business as a firm, the transaction of severance can be appropriately described as one of retirement. But where there are only two partners, the appropriate terms to describe severance by one partner of his connection with the business of the partnership is dissolution & not retirement.

In a recent decision of the Apex Court reported in Mohd. Laiquiddin and Another Vs. Kamala Devi Misra (Dead) by L.Rs. and Others, it was held that dissolution of partnership firm on account of death of one of the partners is subject to the contract entered into by the parties. However, where there are only two partners constituting partnership firm, on account of death of one of them, the firm is deemed to be dissolved despite existence of a clause which says otherwise.

In view of the Apex Court''s decisions reported in the cases of Commissioner of Income Tax, Madhya Pradesh, Nagpur & Bhandara, Nagpur v. Seth Goyindrarn Sugar Mills (supra) & Mohammad Laiquiddin and Anr. v. Kamala Devi Mishra (Dead) By LRs and Ors. (supra), the partnership automatically comes to an end & there is no partnership for a third party to be introduced therein where the partnership is between two persons after the death of one partner.

13. The Mines & Mineral (Developments. Regulation) Act, 1957 & the Mineral Concession Rules 1960, have been made to regulate mining leases. Prior to this Act there were specially made statutory provisions to regulate these leases, Mining leases are not grants of the ordinary types as, covered under the Grants Act. The object of the Grants Act as declared in its preamble is to remove certain doubts as to the extent & operation of the T.P. Act, 1882, & as to the power of the crown to impose limitations & restrictions upon grants & other transfers of land made by it or under its authority. Section 2 enacts that the provisions of the T.P. Act do not apply to crown grants. Section 3 declares that "all provisions, restrictions, conditions & limitations over" shall take effect according to their tenor.

In view of the above position, in the present case, the dispute being with regard to fining lease, it cannot be a grant.

14. In the case of Sri Tarkeshwar Sio Thakur Jiu Vs. Dar Dass Dey and Co. and Others, , the Apex Court held that the definition of ''immovable property'' given in Section 3, para 1 of the Transfer of Property Act being in negative terms & not

exhaustive, the definition given in Section 3(26) of the General Clauses Act will apply to the expression used in the Transfer of Property Act except as modified by the definition in the first clause of Section 3. The expression ''immovable property'' comprehends all that would be real property according to English Law, & possibly more. Thus, every interest in immovable property or a benefit arising out of land, will be ''immovable property'' for the purpose of Section 105. Therefore, a right to carry on mining operations in land to extract a specified mineral & to remove & appropriate that ''mineral'' is a right to enjoy immovable ''property'' within the meaning of Section 105 more so, when as in the instant case it is coupled with a right to be in its exclusive khas possession for a specified period. The right to enjoy immovable property spoken of in Section 105, means the right to enjoy the property in the manner in which that property can be enjoyed. If the subject-matter of the lease is mineral land or a sand-mine, as in the present case, it can only be enjoyed & occupied by the lessee by working it, as indicated in Section 108 of the Transfer of Property Act, which regulates the rights & liabilities of lessors & lessees of immovable property. Minerals may be made a part of the subject-matter of a lease, & in such a case the lease would permit the idea of the partial consumption of the subject-matter of the lease,

In view of the above discussion, since the transfer of mining lease is a property transfer, it requires registration,

15. The last point to be determined in this writ application is that since the lease was in favour of Manoranjan Das & was not transferred to any partnership firm, whether the Petitioners have no locus standi to claim any relief to continue the mining operation as they have not obtained the lease & the transfer deed was not registered.

In the present case, since the transfer deed have not been executed, the right over the mines cannot be transferred to the transferee. Hence the Petitioners have no locus standi to claim any relief Jo continue the mining operation.

16. In view of the aforesaid discussions, the writ application is dismissed, No costs.

I.M. Quddusi A.C.J.

I agree

