
(1933) 01 CAL CK 0019
In the Calcutta High Court

Jalpaiguri Banking and Trading Corporation, Ltd.

APPELLANT

Vs

Samaresh Chakrabarti

RESPONDENT

Date of Decision : 05-01-1933

Acts Referred:

Citation : AIR 1933 Cal 535 : 145 Ind. Cas. 666

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

Bench : Division Bench

Judgement

Lort-Williams, J.—The petitioners obtained a decree against the executors of the late Byomkesh Chuckerbutty for over four lakhs of rupees, which decree remains wholly unsatisfied. By an indenture, dated 7th September 1927, Byomkesh Chuckerbutty mortgaged to the Imperial Bank of India certain properties mentioned in Schs. 1, 2 and 3 to the deed of mortgage together with all lands, buildings and structures thereon, and all rights, liberties, privileges, advantages, easements and appurtenances whatsoever belonging or relating to the said property. Schs. 1 and 2 refer to the mortgagor's property in certain buildings in Calcutta. Sch. 3 reads as follows:

All those zamindari lands and rights known as the Chakrabarti estate comprising: (a) Datia pargana being situate in district and registration office of Khulna, tauzi Nos. 72-2, 82 and 413, Mauzas Nagarhata, Daulatpur, Sarsa, Bansbarhi, Raita, Pakurhia, Jaipur and all lands with sudder tahsil thana; (b) Saidpur pargana being situate in district and registration office of Jessore, tauzi Nos. 5515, 4212, 4463, 4376, 4147, 4356, 175, 151, 152, 1129 and 64B (Ghurnia), Mauzas Rajganj-Lakshmanpur, Juranpur, Bajiapur, Khanpur, Bhomardaha and all lands with sudder tahsil thana; (c) Bharpkata Jungpur pargana being situate in district and registration office of Jessore, tauzi No. 4205, Mauza Gangalia, and all lands with sudder tahsil thana; or howsoever otherwise this estate is or was described or known.

2. The petitioners allege that certain properties belonging to Byomkesh Chuckerbutty and situate in Saidpur and Bharpkata Jungpur parganas are not

included in this mortgage. Those properties are (1) tauzi No. 20-B. 1 (siddhaniskar); (2) Khatiyani No. 471 (siddhaniskar): these properties are situated in Saidpur pargana; (3) Khatiyani No. 59 (patni); (4) Khatiyani No. 61 (patni). These properties are situated in Bharpata Jungpur pargana. And the petitioners ask that these properties should be sold in execution of their decree. The Imperial Bank, on the other hand, contends that these properties formed part of an estate belonging to Byomkesh Chuckerbutty, which is called and is known as the "Chakrabarti estate," and consists of zamindari land and rights arising out of land situated in the Datia pargana, which is in Khulna District, and in the Saidpur and Bharpata Jungpur parganas which are in the Jessore District. Under orders of this Court, Mr. K.C. Lahiri was appointed receiver, so far back as 1930. He has given evidence and says that he took possession of the whole of what was stated to him by the executors to be included in the Chakrabarti estate, among which properties were those which the petitioners allege were not included in the mortgage, and that he has been in possession of all those properties ever since, and has managed them and collected the rents. Further, he says that they are known as the "Chakrabarti estate;" but he says further that the properties referred to by the petitioners, though they lie within the area of the Saidpur and Bharpata Jungpur parganas, are not within the area of any of the tauzis mentioned in Sch. 3.

3. I am satisfied that Byomkesh Chuckerbutty intended to mortgage, and did mortgage, the whole of his estate lying within these parganas and known as the Chakrabarti estate, including the properties mentioned by the petitioner. The meaning of the description of the Chakrabarti estate referred to in Sch. 3 is not clear. At first sight it seemed to me that the estate according to the description comprised the whole of the parganas mentioned, but according to the receiver only a comparatively small portion of the area comprised in those parganas belonged to Byomkesh Chuckerbutty. According to the evidence of the receiver, all that Byomkesh Chuckerbutty owned in the Datia pargana were tauzis Nos. 72/2, 82 and 413, and he owned the whole of the area contained in these tauzis. In Saidpur pargana he owned the whole of the area contained within the tauzis mentioned in the schedule and also tauzi No. 20-B. 1 (siddhaniskar) and khatiyani No. 471 (siddhaniskar), to which I have already referred. In Bharpata Jungpur pargana he owned the whole of tauzi No. 4205 and khatiyans Nos. 59 (patni) and 61 (patni).

4. It seems therefore at first sight that the meaning of the description is that the estate comprised only the areas covered by the tauzi numbers mentioned. But the description does not end there, but mentions a number of mauzas by name and all lands with sudder tahsil thana." The meaning of the part of the description is not free from doubt, but so far as I can understand from the evidence it means that certain mauzas and other lands have been erected upon them sudder tahsil thana, or in other words, collecting kacharies, and that these kacharies are included in the mortgage. The mortgagor, as I have said already, conveyed the land and buildings and structures thereon, but I agree with the

learned Counsel for the petitioners that it was necessary to mention these particular structures in the schedule, otherwise it might have been contended that they had been excluded by the schedule and that, to that extent, the schedule must be held to restrict the general expression in the earlier part of the deed. No evidence has been advanced why the properties mentioned by the petitioners should have been excluded from the mortgage. They form a comparatively small part of the whole of the property which is alleged to be known as the "Chakrabarti estate," and I am satisfied that the mortgagor's property in these parganas is sufficiently described by the name "Chakrabarti estate," and that Byomkesh Chuckerbutty's lands and rights in these parganas are known collectively as the "Ghakrabarti estate," and include the properties mentioned by the petitioners.

5. In my opinion this is a case where one description-and that an incomplete one-has been added to an already sufficient description, and that this added description may be disregarded under the maxim of falsa demonstratio. The principle upon which cases bearing on these points have been decided has been stated by Romer, J., in *Cowen v. Truefitt, Ltd.* (1898) 2 Ch 551. In accordance with this principle I think that the description of the property as "Chakrabarti estate" is sufficient to render certain what the mortgagor intended to mortgage, and that the subsequent erroneous enumeration of the properties comprised within that description ought not to have any effect. For these reasons, the petition must be dismissed with costs.