

(1951) 11 PAT CK 0009
In the Patna High Court
Case No : A.F.A.D. No. 1390 of 1948

Karunamoy Banerji and Others

APPELLANT

Vs

Kumar Pashupati Nath Malia and Another

RESPONDENT

Date of Decision : 22-11-1951

Acts Referred:

Bengal Court of Wards Act, 1879 — Section 18, 39
Contract Act, 1872 — Section 2
Specific Relief Act, 1877 — Section 27A, 3

Citation : AIR 1952 Patna 139

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

Bench : Division Bench

Advocate : B.C. De and S.K. Majumdar, for the Appellant; S.M. Dutt, P.B. Ganguli and K.N. Chaturvedy, for the Respondent

Final Decision : Dismissed

Judgement

Rai, J.—The plaintiffs have come up in second appeal before this Court against the judgment and the decree of the Additional District Judge of Purulia upholding the judgment and the decree of the Subordinate Judge of Dhanbad.

2. The plaintiffs filed the suit out of which the present appeal arises for specific performance of an agreement directing the defendants to execute a lease of coal mining rights described in the schedule attached to the plaint on terms and conditions specified in a draft lease. The case of the plaintiffs was that the estate of defendants 1 and 2, namely, Siarsol Raj Estate, was under the supervision of the Court of Wards. In 1943 defendant No. 1, Kumar Pashupatinath Malia, was working as an Honorary Manager of the estate under the Court of Wards. In February 1943 the plaintiffs addressed a letter to the Manager Court of Wards for Siarsol Raj Estate, proposing for grant of lease of 41 bighas of coal lands in Mauza Bhaljhuria. After some correspondence defendant No. 1, in his capacity as the Manager of the Estate under the Court of Wards, agreed to settle the lands to the plaintiffs. In accordance with the settlement, the plaintiffs sent a cheque for

Rs. 1,025 in full payment of the salami for grant of the lease. A draft of the indenture of the proposed lease was prepared. The proposal for the settlement of the land in question was referred to for approval of the member of the Board of Revenue but as the estate was released on the 14th of August 1944, the Secretary, Board of Revenue, Bengal, wrote to the Commissioner of the Burdwan Division that as the estate had been ordered to be released with effect from the 14th of August 1944, sanction of the Board to the proposal was not necessary. The case of the plaintiffs further was that after the release of the estate in favour of defendants 1 and 2 the latter agreed, through their Manager in charge of the coal and minerals, who informed them through a letter, dated the 2nd of September 1944, that the draft lease which had already been approved could be engrossed on proper stamp paper and asked the plaintiffs to verify the draft lease once more. But in spite of this agreement, as the defendants refused to execute and register the lease, it became necessary for the plaintiffs to institute the present suit.

3. The suit was contested by defendants 1 and 2 who pleaded that there was no valid agreement entered into between the plaintiffs and the defendants which could be enforced in the present action. They further pleaded that they had not agreed to lease the properties in dispute to the plaintiffs nor had they authorised any of their manager to ratify or agree to any agreement to lease. They raised several other pleas which it is not necessary to mention here.

4. Both the Courts below have held that there was no valid agreement in favour of the plaintiffs which could be enforced in the present action and have consequently dismissed the suit.

5. Mr. De for the plaintiffs contended before us that it is well established from evidence on record that defendant No. 1, in his capacity as the Manager of the Court of Wards of the Siarsol Estate had agreed to lease the properties in dispute on the terms incorporated in the draft lease and his Manager having subsequently accepted those terms after the release of the estate, a valuable right had accrued in favour of his clients which could, be enforced in the present action. He further contended that even without the sanction of the Member of the Board of Revenue, defendant No. 1 in his capacity as the Manager, Court of Wards, could have entered into an agreement to lease. According to him, it was only when the document of lease was to be executed that it would have been necessary to procure sanction of the Member of the Board of Revenue. In this connection he referred to the provisions of Sections 18 and 39 of the Court of Wards Act 1879, (Bengal Act IX of 1879). In my opinion, there is no force in the contention of the learned Advocate for the appellants. Section 39 of the Court of Wards Act runs thus :

"Every manager appointed by the Court shall have power to manage all property which may be committed to his charge, to collect the rents of the land entrusted to him, as well as all other money due to the Ward, and to grant receipts therefor; and may, under the orders of the Court, grant or renew such leases and

farms as may be necessary for the good management of the property."

From the wordings of the above section it is clear that the lease could have been granted only under the orders of the Court. In view of this specific provision, I am not inclined to accept the contention of Mr. De that the Manager could have independently entered into an agreement to lease.

6. Mr. De further contended that from, the letter Exhibit A-2, dated the 14th of August 1944 sent by the Secretary, Board of Revenue, Bengal, to the Commissioner of the Burdwan Division, it was clear that the Board had waived its right given to it by Sections 18 and 39 of the Bengal Act IX of 1879, In that view of the matter, according "o him, absence of a specific sanction would not invalidate the agreement which had already been completed between his clients and defendants No. 1 as the Manager of the Siarsol Estate, in pursuance of which his clients had deposited the salami money. In this connection he referred to a passage from "The Interpretation of Statutes" by Maxwell. The relevant passage runs thus :

"Everyone has a right to waive and to agree to waive the advantage of a law or rule made solely for the benefit and protection of the individual in his private capacity, which may be dispensed with without infringing any public right or public policy."

I am afraid this passage cannot come to the assistance of Mr. De's clients. From the wordings of Exhibit A-2, it is clear that the Court never waived any of its rights conferred on it by the provisions of Sections 18 and 39 of the Court of Wards Act 1879.

7. Now, the alleged agreement by the Manager, Court of Wards, without the sanction of the Member of the Board of Revenue cannot be enforced at all in the present action. Section 27-A of the Specific Relief Act deals with specific performance of a "contract" to lease. The section runs as follows :

"Subject to the provisions of this chapter where a contract to lease immovable property is made in writing signed by the parties thereto, or on their behalf, either party may notwithstanding that the contract, though required to be registered has not been registered, sue the other for specific performance of the contract if :

(a) Where specific performance is claimed by the lessor, he has delivered possession of the property to the lessee in part performance of the contract; and

(b) Where specific performance is claimed by the lessee he has is part performance of the contract taken possession of the property or being already in possession continues in possession in part performance of the contract, and has done some act in furtherance of the contract :

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance

thereof, This section applies to contracts to lease executed after the first day of April. 1930."

Section 3 of the Specific Relief Act provides that :

"all words occurring in this Act, which are de-fined in the Indian Contract Act, 1872, shall be deemed to have the meanings respectively assigned to them by that Act."

Section 2(h) of the Indian Contract Act, 1872, runs as follows :

"An agreement enforceable by law is a contract."

8. Now, it is admitted by Mr. De, that the agreement to lease entered into by the Manager, Court of Wards, cannot be enforced until the granting of the lease has been sanctioned by the Member of the Board of Revenue. In this view of the matter, the said agreement by defendant No. 1, in his capacity as the Honorary Manager under the Court of Wards, is not enforceable at all in the present action.

9. Mr. De thereafter relied upon the letter dated the 2nd September 1944, Ex. 3(z) 8 sent to his clients by one Mr. Dasgupta, Manager of defendants 1 and 2, in charge of coal and minerals of the estate, in support of his contention that the defendant will be deemed to have agreed after the release of the estate by the Court of Wards to grant the lease of the properties in dispute to the plaintiffs. The relevant portion of the letter runs as follows :

"I have to refer you to this office letter No..... dated 22nd August 1944, and to say that the necessary documents may now be engrossed on proper stamp papers as per approved draft lease and be executed. But I should think it would be advisable for you to get the approved draft verified once again before it is made over for engrossment."

Mr. De contended that defendants 1 and 2 will be bound by the action of Mr. Dasgupta who was their Manager in charge of the coal and minerals. In this connection he relied upon the cases of "John Samuel Swire v. Robert Francis", (1877) 3 A C 106 and "Barwick v. English Joint Stock Bank", (1848) 2 Ex. 259. In my opinion, those two cases are distinguishable. It has not been established in the present case that Mr. Dasgupta had any authority to enter into an agreement to lease coal lands for mining purposes. A person in charge of coal and minerals cannot be presumed to be one who has authority to alienate or enter into an agreement to alienate a portion of the estate.

10. In reply, it was rightly argued by Mr. Dutt for defendants 1 and 2 that it has not been pleaded by the plaintiffs that Mr. Dasgupta had any authority to enter into an agreement to lease immovable properties of the estate. He directed our attention to paragraph 10 of the plaint where reference has been made to the letter Ex. 3 (z) 8. Mr. Dutt further pointed out to us that it has been specifically pleaded in paragraph 18 of the written statement that defendants 1 and 2 had not authorised any body either expressly or impliedly to accept, ratify or

conclude on their behalf any proposal or agreement to grant mining lease or for the matter of that to make agreement for grant of any kind. Thus, the contention of Mr. De cannot be accepted that the letter Ex. 3 (z) 8 will be deemed to have clothed his clients with a right which could be enforced in the present action. But even if Mr. De's contention be accepted that an agreement by Mr. Dasgupta will bind defendants 1 and 2, the suit is bound to fail, as was rightly argued by Mr. Dutt, because the alleged draft for the instrument of lease, Ex. 2, referred to in the letter Ex. 3 (z) 8, relates to the execution of a lease by a ward of the Court of Wards, which admittedly, cannot be enforced in the present action. It is not the case of the plaintiffs that the letter Ex. 3 (z) 8 made reference to any other draft than Exhibit 2; on the contrary, paragraph 10 of the plaint refers to this very draft on the basis of which the plaintiffs have based their main relief in the present action. Thus, in any view of the matter, the plaintiffs cannot succeed at all in the present action and their suit has been rightly dismissed by the Courts below.

11. The result is that the judgment and the decree of the Court of appeal below are upheld, this appeal fails and is dismissed with costs.

Jamuar, J.

12. I agree.