
(1923) 07 PAT CK 0015
In the Patna High Court

Keneth Arthur Hill and Another

APPELLANT

Vs

Ranjan Bardhan and Others

RESPONDENT

Date of Decision : 27-07-1923

Acts Referred:

Citation : AIR 1924 Patna 526

Hon'ble Judges : Mullick, J;Bucknill, J

Bench : Full Bench

Judgement

Mullick, J.—The proprietors of Mauza Jorekuri in the sub-division of Jamtara gave a Mukarrari settlement of that Mauza to Kulanada Tewari and others between the years 1868 and 1874 who in their turn gave a mining lease in or about October, 1913 to one Mr. Cornish. The plaintiffs in the present suit derive title from Mr. Cornish by two transfers dated the 27th March, 1915 and November 1st 1915. The contesting defendant, who is defendant No. 13, claims title from the patnidars, to the mineral rights by various transfers between the years 1899 and 1920. The present suit was lodged on the 3rd September, 1921, in respect of an area of 65 bighat on the allegation that the defendant has begun to work coal upon 26 bighas of the land leased to the plaintiffs. The plaintiff ask for a declaration of title in respect of the whole 65 bighas and recovery of possession in respect of the 26 bighas and for permanent injunction restraining the defendant from working coal upon the entire area of 65 bighas. During the hearing of the suit; they also asked for an ad interim injunction.

2. It appears from the order-sheet of the Subordinate Judge that on the 17th December, 1921, he passed an order stating that he would hear arguments as to the prayer for an injunction on the 24th January, 1922. On this latter date the Subordinate Judge being absent the case was postponed by his heumtenens till the 22nd March, 1922. On that date a pro forma defendant being dead time was given to amend the plaint and to issue summons on his heirs and the case was adjourned to the 11th April, 1922. On the 11th April, 1922, the parties were complete and the Subordinate Judge called upon the Pleader of the plaintiffs to

make their submissions for an ad interim injunction. The Pleader replied that he had not come prepared and he asked for another date which the Court refused. The Court thereupon made an order refusing temporary injunction on the ground that it was advisable that the question should be threshed out in the case itself and that it would be better not to issue a temporary injunction in the preliminary stage of the trial.

3. The present appeal has been preferred against the Subordinate Judge's order.

4. Now, I am unable to understand why the pleader of the plaintiffs could not argue the case on the 11th April. The 24th January has been fixed for arguments and the fact that the case was adjourned to the 2nd March and again from the 2nd March to the 11th April did not relieve the pleader from the duty of being prepared to argue his client's case. It was wholly unreasonable to expect that the Court would fix another date for the argument of this small question. Therefore, although the reason given by the learned Subordinate Judge for disarming the application may be open to question, I do not think that, in the circumstances, he was wrong in refusing any further adjournment; and in dismissing application upon the materials before him. Now from the materials which are upon the record and which have been placed before us, it does not appear that any prima facie case was made out before the Subordinate Judge establishing the title of the plaintiffs to the sub-soil rights. A mere allegation that the mukarraridar had subsoil rights will not do in view of the fact that the defendant expressly denies that the mukarrari lease carried with it sub-soil rights as well. It is said that the lease was in the possession of the mukarrandar. That may be so, but having come to press an application for ad interim injunction it was the duty of the plaintiffs to place materials before the Court upon which such an injunction could be granted. Then, it appears that the defendant has already spent a large sum of money in sinking shafts and in building cooly lines on the lands according to the 26 bighas now in dispute and that upon the 26 bighas he has sunk a shaft which has cost a certain amount of money. The question is whether the stopping of all work in connection with this shaft will injure the progress of the work which has already been done in the surrounding lands and whether the cost already incurred in sinking the shaft will be more or less thrown away if the work is now stopped. On the whole, the balance of convenience seems to lie in favour of the defendant, for the defendant is a substantial man and any damage that may be done through the surface and the underground will, in the event of the plaintiffs succeeding in their suit, be recoverable from the defendant. In my opinion, on the materials before the Court, the temporary injunction should be refused.

5. The order of the Subordinate Judge, therefore, is affirmed and the appeal is dismissed with costs.

Bucknill, J.

6. I agree.