

(1911) 08 CAL CK 0040
In the Calcutta High Court

Lal Gopal Datta Chowdhury

APPELLANT

Vs

The Khorooriah Majozilla Zemindary Syndicate Ltd.

RESPONDENT

Date of Decision : 09-08-1911

Acts Referred:

Citation : 13 Ind. Cas. 675

Hon'ble Judges : Teunon, J;Coxe, J

Bench : Division Bench

Judgement

1. The plaintiffs in these suits are the Khorojorah Majozillah Syndicate Co. Ltd, and the defendants are certain of the proprietors of the Khorooriah Barazillah Zemndiri. The defendant Lal Gopal Dut had a share of one-fourth, Bhupendra of Barazillah, (so-called to distinguish him from Bhupendra of Majozillah), one of the Directors of the plaintiff Company, and Mrinmoyi had one-twelfth, Charu Chandra and Tej Chandra had one-twelfth, and Krishna Binodini Dasi had one-twelfth. Of this last mentioned sharer Jyotis-man and Arindamher are grown-up sons defendants Nos. 1 and 2 in Appeal No. 263, who succeeded to one-twenty-fourth, while the other twenty-fourth fell to her minor sons, Hrishikesh and Sankarkripa, defendants Nos. 1 and 2, in the guardianship of their father Jadab in Appeal No 150. It is asserted on behalf of the plaintiff Company, that these defendant Nos. 1 and 2 covenanted to give them a patni of their interest in the Barazillah, but that they subsequently resied and leased their interest to Lal Gopal Dutt, defendant No. 3. The suit is for specific performance and damages and has been decreed by the Court of first instance. Defendant No. 3 appeals.

2. The first and principal question to be decided in these suits is whether there was or was not a completed contract between the plaintiffs and defendants Nos. 1 and 2 when the latter entered into their contract with defendant No. 3, that is to say, on the 30th September 1906.

3. Negotiations began at the end of 1905 and the Company called for and considered a report from their local Manager. On the 12th April 1906 the Directors of the Company had a meeting and agreed to entrust a Director named

Bijoy Krista with the settlement of the whole matter. They were willing to take a lease either of an interest between 7 5 annas and nine annas or of one less than 7-| annas. In the latter case they were willing to pay rent at the rate of Rs. 30,000 for the whole sixteen annas for the first five years, Rs. 31,000 for the next five years, and Rs. 32,000 thereafter. They agreed to pay as bonus 12 to 15 times the amount remitted as rent, to pay the expenses of collecting the back rents and to pay seven-sixteenths of the back rents actually collected.

4. According to Bhupendra of Barazillah the matter was discussed between him and Bejoy and almost settled. The next meeting was on the 29th April and was attended by Bhupendra of Barazilla who brought with him a letter, signed by himself and possibly by Other co-sharers of the one-fourth share. There is some conflict of evidence as to whether this was signed by all the sharers, when it was produced, or whether it was signed afterwards, when certain alterations had been made in it. According to the plaint it was signed by all the proprietors, when it was produced at the Meeting. But as regards Jadab we have no doubt that it was signed afterwards. The next day Bhupendra of Barazillah wrote a letter to Jadab, telling him what had happened at the meeting and containing the words, "I send this letter to you, which you are to send back after signing it." No suggestion is made that there was any other letter that Jadab was required to sign, and the letter referred to is clearly the letter produced at the meeting of the 29th April.

5. The letter states that the owners of the one fourth share were ready to grant a lease on a rent of Rs. 5,500 for the first five years, Rs. 5,750 for the second, Rs. 6,000 for the third, and Rs. 6,200 thereafter with a bonus of Rs. 34,000. This is the same thing as rent at the rate of Rs. 30,000 for the whole sixteen-annas for the first five years, Rs. 31,000 for the second, Rs. 32,000 for the third, and Rs. 32,000 thereafter, with a bonus of 17 times a deduction of Rs. 2,000 a year. As regards arrears the owners wanted Rs 5,000 payable at the rate of Rs. 1,000 a year. The letter closed, "If you agree we are ready to make an agreement." The Directors considered this letter in the presence of Bhupendra of Barazillah, and agreed, subject to the sanction of a general meeting, to take a lease of one-sixth or one-fourth at the rent above stated. They cut down the bonus to 16 times the remission, if that did not exceed Rs. 2,000 and 15 times any remission in excess of that sum. As to back rents the sum was cut down from Rs. 5,000 to Rs. 4,000 payable at the rate of Rs. 1,000 a year or to ten-sixteenths of the amount collected deducting cost of collections. These alterations were entered by Bhupendra in the letter except as regards the deduction of the cost of collection. Then, according to the witnesses Kumar Krishna, Bhupendra took the letter away and brought it back duly signed three or four days later. On the 16th May a general meeting of the Company was held, when the action taken at the Directors' meeting was approved and it was ordered that "the matter be placed in the Directors' hands for drawing up the deeds and for doing all other necessary acts in connection with the matter." These words indicate to our minds that the Company regarded the bargain as completed. Furthermore, it is clear

that, if Bhupendra really represented his co-sharers, they too regarded the bargain as completed. The only points remaining undecided were (i) the cost of collection of the back rents, a mere detail which seems to have been omitted by oversight from the alterations to the letter, and (ii) the question what share was to be leased. It is true that Bhupendra wrote the next day to Jadab that nothing was settled as to arrears, but clearly the Company was willing to accept either alternative that the proprietors preferred.

6. Leaving aside the question of the costs of collection, as a negligible detail, the two points that we have to decide are (i) whether the other owners of the one fourth share were consenting parties to the arrangements made by Bhupendra of Barnzillah, and (ii) whether the parties were agreed as to what share should be taken. Now, as to the first point direct evidence of Bhupendra's authority to act for the others is not put in, and indeed could hardly be expected from men so shifty and evasive as the circumstances of the case prove Bhupendra and Jadab to be. But their subsequent admissions place this point beyond doubt. The witness, Sarat, who seems to be a man of position and independence and entirely trustworthy, says that Bhupendra tell him in May that the bargain had been concluded. The first admission in writing is contained in Jadab's application to the Court as certificated guardian of the minors for leave to execute the lease for and on behalf of the infants on the terms aforesaid." The terms are set out and it is distinctly admitted that the elder brothers of the infants and certain other co-sharers of the said property, owning altogether one-fourth share of the said zemindari, have arranged with the said Khorooriah Majozillah Zemindari Syndicate Ltd. for a permanent lease of their shares in the said Zemindari to the said Company in these terms." It is argued that this was merely an application to be allowed to enter into the contract and not a completion of the contract. But it seems to UB to be much morio than that. It recites an admission in the clearest terms that the lease had been arranged and merely prays that permission may be given to execute the lease. And it shows that Jadab fully accepted what Bhupendra had arranged. If this had been all we should have been prepared to hold that after this clear admission it was idle for Jadab to contend that the bargain had not been completed. There is, however, much more, namely, a tatter by all the co-sharers to the Secretary of the Syndicate, dated the 5th September, 1906, authorising him to enter into possession, an acknowledgment of the receipt of rent on the 20th September, and an authority to collect Jalkar rent given on the 22nd September. The former contains a clear admission that the bargain had been completed, running as follows: At present it has been settled that a patni lease of the aforesaid four annas share owned by us, should be granted to the aforesaid Syndicate for the purpose of the collection of rents and the protection of the zemindari, but as there is some delay in the execution of the documents relating to the patni settlement the aforesaid Syndicate is authorised by this letter to take possession of our four annas share," On the same day a formal notice was issued to the tenants over the signatures of all the owners to pay their rents to the Company and this too recites in the clearest

terms that a "a patni settlement of our aforesaid 4-annas share has been made with the Khorooriah Majozillah Syndicate from the aforesaid 1st Baisakh."

7. It is argued that the letter delivering possession contains a false statement to the effect that the ijara under which the land had been held, had been surrendered, whereas the deed of relinquishment had not been executed. But it is proved beyond doubt that this surrender had long been settled and was to take effect from the beginning of the year then current. It is stated in Jadab's application of the 7th July that the surrender was settled. The letter does not recite" that any deed of relinquishment had been executed and its recital that the ijara had been surrendered is in practical accordance with the real facts. Then it is said that the Company were aware of the negotiations with Lal Gopal Dutt and merely had the document executed by way of creating evidence. But this contention is evidently unsustainable. How can the Company be said to have created false evidence by these documents? The defendants either were bound or were not bound to the Company on the 5th September. If they were bound the evidence of their admission is true. If not, why should they say that they were bound, and how can their admissions over their own signatures be regarded as a creation of evidence by the Company? It is impossible to suppose that they were colluding with the plaintiffs to defraud Lal Gopal Dutt, with whom at that time they had entered into no contract at all. This evidence seems to us conclusive and there is no real answer to it.

8. Again, on the 20th September each owner of the three shares of one-twelfth received rent from the Company and granted a receipts on the following terms: "Having received Rs. 333-5-4 in cash from the Secretary to the Mezozillah Zemmiari Syndicate Ltd. for the rent of the Bhadri hist, according to the terms of the agreement made with the Mezozillah Zemindari Syndicate Ltd. for the settlement of the patni lease of our own share out of the 4 annas share of the Barassilla, we give this receipt." The receipt for the one-twelfth share covered by the suits is signed by Jadab on behalf of his minor sons and by the two grownup sons. This evidence is not so strong against the minors as against the others, as it appears that at this time Jadab was in considerable distress over the health of one of his sona and in need of money. Moreover, it was signed by him subject to the approval of the patni draft." But these circumstances cannot wholly exempt him from being bound by this formal admission of the existence of the agreement.

9. We do not think that any inference adverse to this payment can be drawn from the slight confusion that exists regarding its date or from the fact that it was not sanctioned at a previous meeting. The receipts are dated 20th September, but the Secretary was authorised by the majority of Directors to pay the money on the 21st, and it appears from the evidence of Bhupendra of Barazillfth and from Exhibit 54, a letter from Jadab to Kadareswar, that the money was actually paid on the 22nd. We see nothing very unusual in the formal receipt being drawn up before the payment, or even before sanction was given, if

the Secretary had no doubt about obtaining the sanction. As to the fact that the payment was not previously passed at a meeting and was opposed by Bhupendra of Majozillah afterwards, that might affect the regularity of the payment, but could not affect the force of the admission in the receipt.

10. As to the authority to collect jalkar rent, this is alleged clearly in the plaint and not traversed. The letter is signed by Jadab on behalf of the minors and by his adult sons and contains a clear admission that all has been completed except the execution of the formal documents. The letter begins; "As there is still some delay in the execution of the necessary documents relating to the patni lease of the 4-annas share of the Barazillah belonging to us in respect of which an agreement to give a patni to the Majozillah Syndicate Co. Ltd., has been concluded.

11. The next point is whether the agreement can be regarded as incomplete by reason of uncertainty whether the whole of the one-fourth share was to be leased or each fraction separately. Now it is quite clear that the Company was willing to take whatever was leased to them. In the proceedings of the 12th April they were ready to take an interest between 7 1/2 and 9 annas or one below 7 annas. At the meeting of the 2nd September, though they evidently understood that the whole one-fourth share had been leased, they were willing that the preparation of a formal document with respect to one-twelfth should stand over. The witness Peari Lal Halder, Attorney for the Company, states that on the 16th August Bhupendra of Barazillah came to his office and was asked by him to give details to show how the rents were to be apportioned to enable him to draw up the leases. It appears that the different co-sharers wanted different amounts of rent to be commuted into bonus. And that this evidence is true is shown by the fact that Bhupendra on the 25th August and the grown-up sons of Jadab on the 12th September sent in their apportionment statements. Nothing turns on the fact that alterations were made in the letter. It must be remembered that the defendants are Bengalis, having distinct and defined interests in the land, and are not a joint family governed by the Mitakshara. The agreement was that the whole of the one-fourth share should be leased but that does not necessarily mean that it was to be leased jointly by all the co-sharers; and clearly it was the intention of the parties that each branch of the family should lease his interest separately. It has been argued that there was no mutuality and that the defendants could not have sued the company for specific performance of their agreement to take a lease of their separate interests. But, in our opinion, there was an agreement by the Company to take these separate leases and the defendants could have sued for specific performance of it. No doubt if the Company had turned dishonest it would have been difficult for the defendants to prove the agreement to take separate leases, as this was all along more understood than expressed. But the mutuality of a contract does not depend on the evidence for it and if as in this case, a mutual contract existed the fact that it would under certain circumstances have been difficult to prove it, does not affect its validity.

12. The proceedings at the meeting of the 19th August do not weaken our view that the contract was complete before that day. All that was settled on that day was subsidiary points, which needed, of course, to be arranged, but did not affect the binding character of the existing contract. The form in which the arrears were to be paid was settled, as well as the questions of instalments and costs. It is alleged and not categorically denied and it is, no doubt, true that the meeting was attended by both Bhupendra of Barazillah and Arindam.

13. We have no doubt that on the 30th September there was a valid and completed contract subsisting between the parties and that by this contract the defendants Nos. 1 and 2 were bound to lease their interests to the plaintiff Company on the terms agreed upon. The learned Counsel for the appellant has referred us to numerous cases decided in England which deal with the question when a contract to be gathered from letters, etc., can be said to be concluded. We have carefully examined these cases, but it is unnecessary to refer to them, because in none of them are there, as there are in this case, distinct and repeated admissions that the contract has been made and concluded.

14. The next question that arises for decision is whether the appellant was aware of this contract when the other defendants executed the agreement of the 30th September in his favour. On this point, too, there is, in our opinion, no room for doubt. The negotiations with Lal Gopal Datt were begun in 1905 and it is evident that Jadab, who seems to be entirely devoid of scruple, continued to negotiate with him, long after he had finally settled with the Company. The appellant and his son Manujendra, who constantly acted for him, were on intimate terms with Bhupendra of Majozillah a Director of the plaintiff Company, who opposed the taking of the lease from the beginning. It is admitted that the appellant's son made inquiries from the Directors, and it is incredible under these circumstances that Bhupendra of Majozillah should not have told them what had happened. It is equally incredible, in the face of the minutes of the meetings, that the other Directors should, as they say, have told them that they were perfectly willing that the defendants should lease the property to them. Sarat who, as we have said, seems a trust-worthy witness says that he informed Manujendra that the contract had been completed, one or two days after the letter authorising delivery of possession was written, that is to say, about the 7th of September. Admittedly, Manujendra had a conversation with Kumar, the Secretary, on the 17th September and though they give conflicting accounts of what was said, it is not likely that the Secretary concealed the fact that the bargain was concluded. Moreover, that the appellant knew on the 11th October of the contract between Bhupendra of Barazillah and the Company is clear from his letter of that date which runs as follows: "The Khorooriah Majozillah (syndicate Limited) have paid you Rs. 333-5-4 for making you agree to grant them a patni lease of your share of the Barazillah property. Under the circumstances as you have not entered into any written agreement to grant a lease of the same to them, as you assure me, I undertake to indemnify you against all losses that you may sustain in consequence of your entering into an agreement with me and I shall, if

necessary, carry on the litigation on your behalf at my expense should they bring an action against you". The appellant clearly knew, when he wrote this letter, that Bhupendra of the Barazillah had made the agreement and in that case he could hardly have remained in ignorance of Jadab's contract. The sum of Rs. 333-5-4 had been paid on the 5th September. It was returned on the 30th September and the money was taken to the Secretary of the Company by the appellant's Darwan and was the appellant's money. It was acknowledged by Bhupendra of Majozillah as coming from the appellant's son. The appellant must have known perfectly well on that date on what account the money had been sent to the co-sharers. We feel no hesitation in holding that the appellant, on the 30th September, knew perfectly well that the defendants Nos. 1 and 2 had contracted with the Company.

15. Next, it is argued that the contract should not be specifically enforced against the minors. But, clearly, the lease was for the minors' benefit. The land had been let to an ijaradar who made no profit out of it and desired to give it up. The Company agreed to give an enhanced rent after five years and a further enhancement after ten years. They agreed to collect and pay a proportion of the back rents. The facts that only two out of the eight owners of the one-fourth share were minors, that the other six, who were equally interested, all agreed to lease their shares on the same terms and that the minors were under the guardianship of Jadab who, whatever may be said against him, cannot justly be accused of failing to use his best endeavours to secure any money that may be obtainable, all indicate that this bargain was for the minors' benefit. That being so, the contract can certainly be specifically enforced *Khairunnessa Bibi v. Lokenath Pal* 27 C. 276; *Mir Sarwarjan v. Fukharuddin Mahomed Chowdhury* 34 C. 163 : 11 C.W.N. 207 : 4 C.L.J. 431 : 1 M.L.T. 360. Reliance has been placed on the case *Chhitar Mal v. Jogan Nath Prasad* 29 A. 213 : A.W.N. (1907) 125 : 4 A.L.J. 24. But it is not clear in that case that the first contract was really concluded, and, in any case, it would not have bound the District Judge, who on his own initiative succeeded in making the second and better bargain for the minor ward. We do not think the case is an authority for holding that when a valid agreement has been lawfully entered into on behalf of a minor and is to the minor's benefit, it can be repudiated if the guardian subsequently finds he can obtain more. In any event, this question does not arise in the present case, for the terms offered by Lal Gopal have not been shown to be appreciably better than those conceded by the plaintiff Company, and but for the prior contract with that Company would never have been offered at all. Accordingly, we hold that the contract can be specifically enforced against the minors.

16. Next, it is argued that the suit is not maintainable because the Company is a bogus Company; this contention, however, is too intangible to be dealt with. It has not been shown to us that the constitution of the Company offends against the provisions of the Companies Act, but it has been argued that the shareholders of the Company being identical with the proprietors of the land, its recognition would be contrary to public policy. The learned Counsel for the appellant,

however, has been unable to show us how the existence of this Company injures or endangers the rights of any body. Indeed, if the proprietors are numerous, and their separate interests are minute, the adoption of the means for the management of their property would seem to be beneficial not only to themselves but to all who may be compelled to have dealings with them.

17. Next, it is urged that one suit should have been brought with respect to the whole one-fourth share. These two suits were brought first and subsequently suits were brought against the other co-sharers. Those, suits were compromised in favour of the plaintiff. As we have said, the co-owners were separately bound to the Company with respect to their respective interests, and separate suits were maintainable.

18. Next, it is urged that the decree is wrong in directing the execution of a lease similar in form to that executed in favour of the defendant No. 8. The plaintiffs, however, do not appeal and it seems to us that the appellants have no reason to complain of this. The fact that the lease is to be in that form does not mean that it is to be executed with respect to property covered by the lease to the defendant No. 3. The property to be leased is correctly described in the schedule to the decree.

19. Finally, it was faintly suggested that a patni could not be granted in more than one estate. This point has never been raised before and we think there is nothing in it. There is nothing to indicate that the parties were anxious that the provisions of the Patni Regulations should apply to the lease or that they ever considered the point. If those provisions would not apply to the contract that has been completed, the plaintiffs would none-the-less be entitled to a permanent lease.

20. A cross-appeal has been preferred but the Court-fees have not been paid.

21. The appeals and the cross-appeals are dismissed with costs.