

(1928) 12 PRI CK 0009

In the Privy Council

Case No : Privy Council Appeal No. 30 of 1927

Lewis Pugh Evans Pugh

APPELLANT

Vs

Ashutosh Sen and others

RESPONDENT

Date of Decision : 14-12-1928

Acts Referred:

Citation : (1929) AIR(PC) 69

Hon'ble Judges : John Wallis, Warrington of Clyfee, Viscount Sumner, JJ.

Advocate : Watkins and Hunter, Pugh and Co, W. Wallach, G.R. Lowndes, F.E. Farrer, L.De Gruyther, for the Appearing Parties.

Judgement

Lord Warrington of Clyffe

The action in which the present appeal arises was, so far as is material to the appeal, an action of trover, the plaintiffs claiming damages for the conversion by the defendants of specific moveable property, viz., coal wrongfully gotten from the plaintiffs' mines and sold or otherwise disposed of by the defendants to their own use.

The appeal is by one defendant only - the defendant Pugh - and he raises two points of law : (1) that the claim in respect of his own personal working is barred by the statute of limitations, and (2) that, as to workings by his lessees, he has wrongly been held to be jointly liable with them, whereas in this respect the plaintiffs' suit ought to have been dismissed as against him.

The plaintiffs' claim alleged fraud as against all the defendants, but this issue was found against the plaintiffs by the trial Judge, and this finding is not questioned now.

On the first of the two points of law referred to above, the trial Judge decided against the defendant Pugh, holding that the case fell within Art. 48 in Sch. 1, Indian Limitation Act, 1908, and accordingly the period of limitation began to run not from the time when the property in question was wrongly taken, but from the time when the plaintiffs first learnt in whose possession the property was.

This point was not raised in the appeal to the High Court, but no objection was taken to its being raised before the Board.

The second of the two points was decided against the appellant by both the Courts in India. There were two concurrent findings, but the appellant contends that such findings were wrong in law, inasmuch as the learned Judges misdirected themselves, and there was in truth no evidence which would justify their findings.

The plaintiffs have in the suit established as against the defendants their right to the coal in an area called by various names, but referred to in the appellant's case and in this judgment as Gaurigram, under a mining pattah dated 3rd April 1914, granted by the Rajah.

The appellant, under a purchase deed dated 5th February 1915, acquired from a company called the Kohinoor Coal Company, Ltd., its liquidators and mortgagees, certain mining rights granted by the Rajah in 1908 in an area called Pathargarda, adjoining part of the western boundary of Gaurigram, together with the benefit, if any, of a sannad of 16th September 1913, therein mentioned, and to be referred to presently.

By an indenture dated 3rd September 1917, the appellant granted, demised and leased to the defendant Bagchi such right, title and interest as he had in (amongst other places) Pathargarda, together with the benefit of and rights under the abovementioned sannad of 16th September 1913.

By an indenture dated 3rd September 1919, the interest of Bagchi in Pathargarda was assigned by him to the defendants, Pilcher and Co., Ltd.

To return now to the sannad of 16th September 1913, and the story connected with it. By that document the Rajah for value promised to grant to the Kohinoor Company above-mentioned settlement of 20 bighas of coal within Gaurigram within four months of its date and that the company should have a lease similar to its Pathargarda lease. The sannad contained the following condition :

" If the mining lease is not executed and registered within the said four months you shall not be competent to make any claim for obtaining this settlement. I shall be competent to settle the said land with anyone else according to my sweet will."

This condition was not performed by the Kohinoor Company.

The plaintiffs at the date of the mining pattah of 3rd April 1914, had no notice of the sannad of 16th September 1913.

The conveyance of 5th February 1915, to the appellants of the mining rights in Pathargarda recited the sannad with the condition above referred to, and stated that no lease had ever been executed in accordance therewith, but, as above-mentioned, included in the property and rights conveyed "the benefit, if any, of the sannad."

The appellant on taking possession under his conveyance found that the Kohinoor Company had extended its workings into Gaurigram. Having no notice of the grant to the plaintiffs or their predecessors of the grant of 3rd April 1914 he immediately approached the Rajah for the purpose of obtaining from him, if possible, an extension of the sannad. He believed that he had obtained a promise to this effect, and in this belief and still without notice of the plaintiffs' rights, continued the workings under the 20 bighas referred to in the sannad. It was not until 23rd June 1919 that the appellant heard of the grant of 3rd April 1914, and then realized that a lease of the mining rights within the 20 bighas in Gaurigram could not be obtained. By this time, as mentioned above, he had parted with his interest in Pathargarda by the grant of 3rd September 1917, to Bagchi.

The appellant's workings in Gaurigram ceased in January 1917. The suit was begun on 26th June 1920.

On the question whether the Courts in India were right in holding that the appellant was jointly liable with Bagchi and Pileher and Co., Ltd., respectively, for their workings in Gaurigram, it is necessary to mention a few further facts.

The deed of 3rd September 1917, was, in their Lordships' opinion, an assignment of the appellant's rights and interests under his conveyance of 5th February 1915, and not a mere under-lease. It is true that the appellant is therein described as "lessor" and Bagchi. as "lessee", but the grant is of the whole of his interest. No sub-term is created and, therefore, no reversion expected on a sub-term.

To this deed was annexed a copy of the deed of 3rd February 1915, which showed clearly that the rights under the sannad had expired. The deed reserved to the appellant royalties in respect of coal "raised from the demised premises." It contained a covenant by the appellant to keep the lessee, his estate and effects indemnified against, other things, the encroachments (if any) already committed or made by the appellant in working the collieries, and a further covenant that he would use his best efforts to obtain from the Maharajah a lease of the additional 20 bighas adjoining Pathargarda.

Royalties have been received by the appellant under the last-mentioned deed in respect of coal raised from the colliery generally without distinction as to the particular portion from which such coal was raised.

Their Lordships now proceed to consider the two points raised by this appeal.

First, was the action against the appellant in respect of his own workings barred by the Indian Limitation Act, 1908 ? It is agreed that, if Art. 48 applies to the case, the action is not so barred.

The action was clearly one of trover, and the damages awarded were damages for conversion of specific moveable property, viz., the coal when separated from the land, the conversion consisting in the fact that the appellant converted such coal to his own use by selling or otherwise disposing of it. The Courts in India

have held that he acted in the honest belief that he had obtained or would obtain sufficient authority for what he did. The conversion, therefore, was not dishonest.

The Schedule to the Act contains two

material articles :

" Description of suit.

" Art. 48 - For specific moveable property lost or acquired by theft or dishonest misappropriation or conversion or for compensation for wrongfully taking or detaining the same."

" Art. 49 - For other specific moveable property or for compensation for wrongfully taking or injuring or wrongfully detaining the same. In each case the period of limitation is three years."

Under Art. 48 the time from which the period begins to run is :

"when the person having the right to the possession of the property first learns in whose possession it is, and under Art. 49

" when the property is wrongfully taken or injured or when the detainer's possession becomes unlawful."

In their Lordships' opinion the decision of the trial Judge in this case is correct, and Art. 48 is the article that applies. The two articles are the only ones that apply to claims in respect of specific moveable property. Art. 48 alone refers to conversion, and their Lordships can see no ground for splitting up conversion into two classes, one dishonest and the other not dishonest. If such were the intention one would have expected to find such a distinction between different classes of the same tort made clear by the express inclusion in Art. 49 of the second of the two classes. The truth is that, if the article is read without the commas inserted in the print, as a Court of law is bound to do, the meaning is reasonably clear. "Conversion," a well-known legal term for a particular class of tort, is referred to as one of the modes by which specific moveable property may be wrongfully acquired, the other being theft and dishonest misappropriation. The opposite view involves giving a different effect to "or" preceding conversion, to that which it has before dishonest misappropriation." In fact, in each case it is equivalent to "or by."

If this view is not correct, then there is no reference to what one may call simple conversion except by general words. On this point their Lordships agree with the careful judgment of Das, J., in the *Lodna Colliery Co., Ltd. v. Bepin Behari Bose* 1920 1 Pat. L. T. 84 = 65 I.C. 113. At p. 133 (of 55 I. C.) he says :

" Art. 48 deals only with specific moveable . property which falls under one of two classes, viz., (1) such property as has been lost, or 12 Ad. and E. 40 as has been acquired by (a) theft, (b) dishonest misappropriation, or (c) conversion. No other kind of moveable property is affected by this article."

It is true, he goes on to say, that in his opinion the defendant's conduct was equivalent to theft, but he adds a passage which shows clearly that he would have come to the same conclusion in a case of simple conversion, p. 134 :

"The plaintiff's complaint is that the defendant has without authority taken possession of the coal belonging to the plaintiff with the intention of assarting some right or dominion over them. The plaintiff company is therefore charging him with conversion It will be noticed that the word "conversion" is used by the legislature in Art. 48; it finds no place in Art. 49. It must be presumed that when the legislature has deliberately used a term which has a known legal significance in law it has attached to that term that known legal significance."

Foster, J., stated that on legal points he agreed fully with the judgment of Das, J.

Their Lordships have not been referred to any other Indian case which deals with the precise question. They are of the same opinion as that expressed by Das, J. and the appeal on this point therefore fails and ought to be dismissed.

Secondly, as to the question whether the appellant can be made jointly liable for the acts of Bagchi and Pilcher and Co., Ltd., respectively.

The trial Judge so held on the ground that his position as lessor would render him liable, and cited Doe v. Harlow 12 Ad. and E. 40 as his authority. In the High Court, Adami, J., did not dissent from this view, but added that in his view there were facts which established an encouragement of the wrongdoers on the part of the appellant and that this fact was sufficient to render him liable for their acts.

In their Lordships' opinion the learned Judges in both Courts have misapprehended the question they had to try, viz., whether the appellant was a joint tort-feasor with Bagchi and Pilcher and Co., Ltd., respectively. Neither the fact that he was their lessor - assuming, contrary to their Lordships' view, that he was a lessor in the proper sense of the term - nor that he "encouraged" the wrongdoers, whatever this may mean, would be sufficient by itself to support a finding that he was a joint tort-feasor.

Doe v. Harlow 12 Ad. and E. 40 (supra) is certainly no authority for the view expressed in the Courts below. It established no principle at all. The question there was whether there was some evidence against one of two persons charged as tort-feasor with having wrongfully kept the plaintiff out of possession of certain premises. The one in question was Warren; he had let the premises to Harlow, who held over after the cesser of Warren's term. The plaintiffs demanded possession from them both and both refused. The Lord Chief Justice held that there was some evidence against Warren, and he left it to the jury to say on the case against all how long the three had been jointly keeping out the rightful proprietors. On a motion for a new trial on the ground of misdirection the Lord Chief Justice, in the course of argument, says:

"Warren encouraged Harlow to remain and received rent from him."

As encouragement he is apparently referring to his joining with Harlow in refusing to give up possession for there is no other fact mentioned in the Report which could be regarded as encouragement. He says in conclusion :

"If there had been no evidence here but that the under-tenant remained in possession I should have left the case differently."

The fact is Doe v. Harlow 12 Ad. and E. 40 settled no principle at all. The Court merely held that there was evidence on which a jury might properly find that Warren had made himself a party to the tort.

Their Lordships are of opinion in the present case that there is no such evidence, and on this point the appeal ought to be allowed and the decree of the Subordinate Judge varied by striking out the words ""and 3" from the direction for payment of Rs. 10,350 with proportionate costs and from the direction for payment of Rs. 3,900 with proportionate costs. The appeal substantially succeeds, inasmuch as the point as to the statute involves a comparatively small sum of money and can hardly have caused a material increase of costs.

In their Lordships' opinion, therefore, the appellant should have the costs of the appeal and proportionate costs both in the Subordinate Court and in the High Court attributable to the items on which he has succeeded. They will humbly advise His Majesty accordingly.