

(1923) 06 PAT CK 0011
In the Patna High Court

Linton Molesworth and Co. Limited

APPELLANT

Vs

Jagannath Supakar and Others

RESPONDENT

Date of Decision : 14-06-1923

Acts Referred:

Citation : AIR 1924 Patna 226

Hon'ble Judges : Foster, J; Das, J

Bench : Full Bench

Judgement

Das, J.—The main question in this appeal turns upon the construction of an underground lease granted by the plaintiffs to Messrs. Linton Molesworth and Co., Ltd., on the 16th August, 1912. In order to understand the lease, it is necessary to refer to an earlier lease dated the 25th August 1892 granted by the plaintiffs to defendants Nos. 3-17, who may be conveniently referred to as the Gorains. That lease was in respect of the entire mouza Swardih with the exception of one pond and homestead land measuring 3 bighas. It is admitted that the pond excepted out of the lease of 1892 was not in existence at the date of the lease, and that neither its area nor its geographical position is indicated in the lease of 1892. Nor is there any indication in the lease as to the situation of the 3 bighas of homestead land. The lease in favour of Messrs. Linton Molesworth and Co., Ltd., was in respect of that portion of mouza Swardih which was expressly excepted out of the lease of 1892; and the critical question in this appeal is whether the disputed land lies within the block that was demised to the Gorains in 1892 or whether it lies within that portion of the mouza which was expressly excepted out of the lease of 1892 and expressly demised to Messrs. Linton Molesworth and Co., Ltd., in 1912. It may be mentioned that, at the date of their lease, Messrs. Linton Molesworth and Co. were in possession of the leasehold interest of the Gorains as their managing Agents and that sometime in 1916 they took a sub-lease of that interest from the Gorains. Messrs. Linton Molesworth and Co. are accordingly in possession of the underground rights of the entire Mouza Swardih as to a portion under the lease of the 16th August, 1912, and as to the other portion under their sub-lease of 1916. It appears that

the terms of their lease are more onerous than the terms of the sub-lease and it is important for them to establish that the disputed land lies, not within the area that was excepted out of the lease of 1892, but within the block that was expressly demised by the plaintiffs to the Gorains in 1892. The suit was for recovery of commission at the rate agreed on the coal raised by the defendant company on the footing that the disputed land from which the coal has been raised is within the block of land that was demised to the defendant company in 1912. The substantial defence is that the lands demised to the defendant company comprise an area of 13 bighas and that the disputed land does not form part of the land demised to them in 1912, but that it forms part of the land which was demised to the Gorains in 1892. The learned Subordinate Judge has found in favour of the plaintiffs and has given them a decree for Rs. 23,907.

2. I have said that the land excepted out of the lease of 1892, that which forms the subject-matter of the lease in favour of Messrs. Linton Molesworth and Co., was not in any way identified in the lease of 1892; but the lease in favour of Messrs. Linton Molesworth and Co. is perfectly clear. After describing the land excepted out of the lease of 1892 as consisting of a bund known as Barabundh amounting to 10 bighas and homestead land amounting to 3 bighas, that is in all 13 bighas by guess, and known as Bist Swardih, the document proceeds to make a settlement in favour of Messrs. Linton Molesworth and Co. of the entire land known as East Swardih and described in the schedule to the lease of Messrs. Linton Molesworth and Co. Ltd. The schedule is in these terms:

The entire land known as Bust Swardih whose area is 13 bighas and whose boundaries are the following:

East--Sutikdih Colliery.

North--Bridge and road.

West--Mine No. 11 of Swardih.

South--The jote land of Malik grantees of the Kabuliat.

3. Shopping here for a moment, it will appear that though the block of land excepted out of the lease of 1892 was not sufficiently described in that lease, its actual situation was known to the parties, and it was certainly known to Messrs. Linton Molesworth and Co., who, at the date of their lease, was actually carrying on the mining operations on the land demised in 1892 to the Gorains as their managing agents. In their Kabuliat which they executed in favour of the plaintiffs, they described that block of land as East Swardih, and as lying within certain fixed boundaries. One of these boundaries is mine No. 11 of Swardih which Messrs. Linton Molesworth and Co. were actually working as the managing agents of the Gorains. The other boundary is Sutikdih Colliery, by no means a negligible thing for those who were not strangers to the locality; and by their Kabuliat) Messrs. Linton Molesworth and Co. described the entire block of land between their own mine No. 11 and Sutikdih Colliery bounded on the north by

the bridge and the road and on the south by certain jote lands as East Swardih and as having been expressly excepted out of the lease of 1892.

4. It will be noticed that the area of the land demised to Messrs. Linton Molesworth and Co. is given by guess; but that the actual demise is expressly of the entire land known as East Swardih and described in the schedule at the foot of the lease. The Commissioner has found that the disputed land lies within the boundaries given in the schedule of Messrs. Linton Molesworth and Co.'s lease and that the area of that land is 41 bighas, 13 cottas and 5 1/2 gandas.

5. Now the important question in this appeal is whether the lease was of 13 bigbas of land situate within certain boundaries mentioned in the lease or whether the lease was of the entire block of land within the boundaries given at the foot of the lease. I confess that it is quite impossible to arrive at any conclusion other than that at which the learned Subordinate Judge has arrived. The operative part of the lease does not give the area of the demised land; but expressly states that the lease is of the entire land known as East Swardih and described in the schedule below. It is quite true that the schedule gives the area of the demised land; but when the schedule is read together with the recital in the lease, it is perfectly clear that the area mentioned in the schedule is by guess and is purely conjectural. It follows therefore that the description of the land demised by acreage is confessedly conjectural; and where this is so, it is impossible to look upon such a description as actually in conflict with the description by boundaries. It is well established that where a deed contains an adequate and sufficient definition of the property which it was intended to pass, any erroneous statement contained in it as to the dimension or quantity of the property will not vitiate the description. The question is whether the description of the property by its acreage can be regarded as an untrue statement. In my opinion there is in this lease one description and one only of the land demised and the description is the description by boundaries. No doubt the area of the demised land is mentioned by guess; but the description area could not be regarded as description of the property demised since it was confessedly conjectural. If I had to decide the case on the construction of the lease of 1912, I would have no hesitation whatever in agreeing with the decision of the learned Subordinate Judge.

6. But then it is argued on behalf of Messrs. Linton Molesworth and Co., Ltd., by Mr. P.K. Sen that, having regard to what has subsequently taken place we ought to hold that the description by area in his lease was the dominant description and that in that view we ought to dismiss the plaintiffs' suit. Now the circumstances, upon which Mr. Sen relies are these. In 1916 a suit was instituted by the Gorains against Messrs. Linton Molesworth and Co. and the present plaintiffs cited as defendants 2 to 8 in that suit. The Gorains, being under the apprehension that the present plaintiff's as brahmottordars of tenure-holders had no title to convey in regard to the underground rights of the Mouza, took a settlement of the underground rights of the entire mouza from the Zemindar, and sued to have it

declared that the present, plaintiffs, defendants 2 to 8, in that suit, had no right whatever to make a settlement of the underground rights of East Swardih with Messrs. Linton Molesworth and Co. It will be remembered that Messrs. Linton Molesworth and Co. were working the Swardih Colliery belonging to the Gorains as their managing agents, and they sought a declaration in their suit be the effect that Messrs. Linton Molesworth and Co. were actually in possession of. East Swardih, not under any lease that may have been granted to them by the present plaintiffs, for that lease was wholly inoperative having been granted by persona without title, but as their managing agents and on their behalf. They entered the subject-matter of the lease of. Messrs. Linton Molesworth and Co. in a schedule of their plaint and they described the property in these words : " The entire land known as East Swardih, the area of which is about 13 bighas, and the boundaries of which are the following:

East--Sutikdih Colliery.

North--Bridge and road.

West--Mine No. 11 of Swardih.

South--The jote land of Jagannath Supakar and others.

7. That was the suit, which they filed in 1913. On the 20th December 1913 there was a compromise between the present plaintiffs, defendants 2 to 8, in their previous suit, and the Gorains who were the plaintiffs in that suit. Mr. P.K. Sen relies upon one of the terms of that compromise which runs as follows: "The area of the land, detailed in the schedule No. 3 of this petition", which is the same as schedule of the plaint, "the subsoil rights of which we have leased out to defendant No. 1, has been put down to be 13 bighas by guess in the patta. The actual area of the said land will be determined in reference to the Revenue Survey Map, i.e., it is put down in the Patta that the area of the homestead land is 3 bighas and that of the Barabundh is 10 bighas. In fact what is shown as the area of the said homestead land and Bundh in the Revenue Survey Map, will be determined as the actual area of the said leasehold land, and we and defendants Nos. 2 to 8 both parties agree to this." Now the actual compromise partitioned the leasehold interest of Messrs. Linton Molesworth and Co., between the present plaintiffs and the Gorains, and provided that the present plaintiffs will be entitled to 2/5ths of that interest and that the Gorains will be entitled to 3/5ths of that interest; and what is remarkable is that schedule 3 of the sulehnama (which is the schedule of the land demised by the plaintiffs to Messrs. Linton Molesworth and Co. on the 16th August 1912) is described as follows: "The entire land known as East Swardih whose area is 13 bighas by guess, and whose boundaries are the following:

East--Sutikdhi Colliery.

North--Bridge and road.

West--Mine No. 11 of Swardih.

South--Jota land of Jagannath Supakar and others.

8. Mr. Sen's contention is this: "It is impossible to understand my lease unless you consider the lease of 1892 because my lease is in respect of that portion of the land which was expressly excepted out of the lease of 1892" and then he argues that it is impossible to understand what was actually excepted out of the lease of 1892 unless you have regard to the compromise of the 20th December 1913. And he contends that if the terms of the *sulehnama* be taken into consideration, it will be found that what was excepted out of the lease of 1892 was a pond and certain homestead land as shown in the revenue survey map. In my opinion the argument does not deserve any success. In the first place, although the *Barabundh*, that is to say, the pond, is shown in the revenue survey map, it is conceded that the homestead lands are not delineated in the map. In other words, the lands demised cannot be completely identified in the revenue survey map, and it is ridiculous to suppose that the demise could be on that map. In the second place, though the *sulehnama* does say that the actual area of the land demised should be calculated from the revenue survey map, the description of that land in the schedule to the *sulehnama* which is identical with the description of the land in the lease of Messrs. Linton Molesworth and Co. shows conclusively that the parties had no doubt whatever as to the identity of the land. In the third place, in a later transaction between the parties into which they had to enter as a result of the consent decree they deliberately gave up the pleas of having the area of the land demised calculated from the revenue survey map. The fifth paragraph of the *sulehnama* provided as follows:

According to the terms of this compromise petition, the bond "that is to say, an agreement carrying out the terms of the *sulehnama*" will be executed between both the parties, the plaintiffs and defendants Nos. 2 to 8 within 15 days from this date. "In pursuance of this express term the parties on the 12th February 1914 executed a document which is referred to as the deed of settlement; and that deed provided as follows:

1. That the area of the land described in the schedule below, namely, schedule which was intended to describe the land demised by the plaintiffs to Messrs. Linton Molesworth and Co. on the 16th August 1912," which has been stated to be 13 btyhas in the Patta, dated the 12th August, 1912, was put down by way of guess. Its area for the present is not determined for certain. The area of the said land is guessed to be 13 bighas for the present and this bond is executed.

2. That it is determined that in respect of the sub-soil and surface right on the said land, described in the schedule, the first party have three fifths share and the second party two-fifths share. According to the said share, the parties shall continue to be in possession and enjoyment thereof down to their sons, grandsons and representatives in succession.

9. The third paragraph of the deed of settlement provides that "the first party and the second party ", that is to say, the plaintiffs in this suit and the Gorains"

agree that the first party and the second party shall have according to the aforesaid share whatever interest has been created by the aforesaid patta, dated the 16th August 1912, since the date of its execution; and according to the share mentioned above, the first party and the second party shall continue to hold possession of the surface and subsoil right of the land described in the schedule." These provisions in the deed of settlement make it perfectly clear that the parties agreed to be bound by the description of the demised land as contained in the schedule of that deed; and that description is identical in every respect with the description as contained in the lease of Messrs. Linton Molesworth and Co.

10. In my opinion if it is relevant to consider the sulebnama of the 20th December 1913, it is also relevant to consider the deed of Settlement of the 12th February 1914 and once the terms of the deed of Settlement of the 12th February, 1914 are examined, the issue is determined and the question is solved.

11. I have thought it necessary to examine the subsequent transactions between the plaintiffs and the Gorains for the purpose of removing a grievance on the part of Messrs. Linton Molesworth and Co., but, in my opinion the question does not arise. Messrs. Linton Molesworth and Co. have been sued in this action for commission on the foot of the kabuliat admittedly executed by them. It is an ordinary action between landlord and tenant; and, in my opinion, it is not open to them to rely upon a subsequent transaction between their lessors and a third party and raise a defence, which would have the effect of imperilling the identity of the boundaries which it was their clear duty to preserve. But Mr. Sen explains to us that Messrs. Linton Molesworth and Co. are not only the plaintiffs' lessees, but that they have also taken a sub-lease from the Gorains, and it is also their duty not to imperil the title of the Gorains to any portion of the disputed land. But, in my opinion, the defence entirely fails as soon as the Gorains are drawn into the controversy. Their sub-lease is of 1916, and they are conclusively bound by the arrangement between their sub-lessors and the plaintiffs as disclosed in the deed of settlement of the 12th February 1914. In my opinion their defence entirely fails, and the decision of the learned Subordinate Judge on this point must be affirmed.

12. It was argued by Mr. P.K. Sen that as a matter of fact there is not an adequate and sufficient definition of the property by boundaries, because the boundaries as given in the lease of 1912 do not agree with the natural features of the land in the locality. The Commissioner in his report stated as follows: "Schedule 1 of the plaint as shown by the plaintiffs agrees in boundaries on the locality as given in the plaint and in the kabuliat executed by defendant No. 1 dated the 16th August 1912 and schedule 2 of the plaint is included within schedule 1 as will appear from the map. The defendant shows the land included within 3, x, y, 15, 16 culvert, 1, 2, 3 to be the land of schedule No. 1 but this does not tally in boundary on the locality for in this plot we do not get on the east the "Sutikdih Colliery" and on the south, the Khas paddy lands of the plaintiffs as will be clear from the map. Now, the Commissioner was examined on

behalf of Messrs. Linton Molesworth and Co. It was not suggested to him that his report on this important topic is erroneous and that the map as drawn by him does not support the statement made by him in the third paragraph of his report. In my opinion it is impossible for this Court to entertain the argument of this nature since no opportunity was given to the Commissioner to explain the matter in the witness box.

13. Lastly, it has been contended that the plaintiffs are estopped from disputing that the acreage is the dominant description in the lease or that the area is to be determined by reference to the revenue survey map. The argument again is founded upon the sulebnama of the 20th December 1913. In my opinion the argument is an unsubstantial one. There is no representation in this transaction by the plaintiffs and certainly none that was intended to mislead Messrs. Linton Molesworth and Co. and to induce them to change their position to their detriment. The statement contained in the first paragraph of the sulebnama is as much the statement of the Gorains as the settlement of the plaintiffs, and the actual truth was known to both the parties and estoppel cannot possibly arise. Apart from any other consideration, Messrs. Linton Molesworth and Co. actually took the sub-lease of the interest of the Gorains after the real position was made perfectly clear by the deed of settlement of the 12th February 1914. No reason is given why Messrs. Linton Molesworth and Co. should have acted upon the sulebnama of the 20th December 1913 rather than on the deed of settlement of the 12th February 1914.

14. There is in my opinion nothing at all in the argument as to estoppel.

15. In the result I would dismiss the appeal with costs.

Foster, J.

16. I agree.