

(1930) 07 PAT CK 0020

In the Patna High Court

Naba Kishore Lal Singh Deo and Others

APPELLANT

Vs

Panchanan Mahto and Others

RESPONDENT

Date of Decision : 02-07-1930

Acts Referred:

Citation : AIR 1930 Patna 601

Hon'ble Judges : Ross, J;Chatterjee, J

Bench : Full Bench

Judgement

Ross, J.—This is an appeal by the defendants against a decree of the Additional District Judge of Manbhum in appeal by which he declared that the plaintiffs were entitled to specific performance of an agreement for a mukarrari lease of the eight annas share in the Rangilabandh in mauza Tuma Jhalda belonging, to the defendant first party. The Subordinate Judge had dismissed the suit.

2. The plaintiffs' case was that this tank had been excavated by their ancestors and they had all along been in possession. Then a dispute arose and they took a inukarrari settlement of the eight annas share belonging to one of the proprietors and after a dispute in the Settlement Department with regard to the other eight annas in which they were successful, defendant 1 brought a suit which was decided in his favour. Then there arose a competition and there came to be a contest for settlement of that eight annas share of the tank between the plaintiffs and the poddar defendants second party. It is a common ground that there was to be a inukarrari lease at a rent of Rs. 5 and what had to be settled was the amount of salaami.

3. The matter was settled in this way that it was put up to auction by the son of defendant 1 and the plaintiffs made the highest bid of Rs. 1,300, and according to the plaint thereby became entitled to a lease on a salaami of Rs. 1,300 with a reserved rent of Rs. 5 in perpetuity. The defence was that the agreement had been reduced into writing and that from that agreement it was clear that time was of the essence of the contract. The plaintiffs had paid Rs. 240-10-0 by acknowledging receipt of a debt from the defendant, as earnest money; and the

agreement was that the balance of the consideration should be paid on the 1st the and there was a term in the agreement that if payment was not made then the defendant was to be at liberty to settle the tank with someone else.

4. The Subordinate Judge has found that one of the plaintiffs signed this written agreement (Ex. A), but that he did not read it and was unaware of its terms. In my opinion the plaintiff is not entitled to escape from the document that he signed merely by saying that he did not read it. He was not illiterate and he was clearly bound by its terms.

5. But there is nothing substantial in this. The terms pleaded in the plaint and the terms in the agreement are the same except that the written agreement makes no mention of the rate of rent. But that is not a point in dispute. The only difference is as to the clause on which it is argued by the appellants that time is made the essence of the contract. It may be that that was the agreement.; but the finding of fact is that notwithstanding the plaintiff's default in making the payment on 1st; Jeth the defendant wrote to the plaintiff to come in on the 4th and he actually did come in on the 4th with the money; and it was only after he had proved his readiness to perform his part of the contract at the invitation of the defendant;, that the poddars outbid him and the agreement went off. In these circumstances, when the defendant himself had waived this clause, it seems to me that it is no longer open to him to say that time was of the essence of the contract.

6. A point is taken, however, on behalf of the appellant that this is not an agreement of which specific performance-can be given because there is no date expressed from which the lease is to take effect and the agreement is therefore uncertain and that there is no use in passing a decree, and therefore a. decree cannot be passed for specific performance of an agreement for a lease which still leaves open to the lessor to fix the date of the commencement of the-lease at any time he pleases because if the parties have not agreed as to the date, then there is no date for the commencement of the lease that can be enforced upon the landlord. But this argument does not apply to the facts of the present case. The plaintiffs' case throughout has been that this tank had been excavated by their ancestors and that they had all along been in possession. Their possession of the eight annas share had been regularized by their taking a lease from the eight annas proprietor and their possession of the other eight annas which had been disputed in a civil suit was being regularized by the present lease. The lease was to be completed and registered on 1st Jeth and there cannot be the smallest doubt that it was an implied term of this agreement that the lease would run from that date, the plaintiffs being already in possession.

7. The decision that was referred to on this point, *Giribala Dasi v. Kalidas Bhanja* AIR 1921 P.C. 71 related to a property which was not in possession of the party seeking to enforce the agreement but could only come to his possession from the date on which the lease was to take effect. As no data had been settled in the agreement, the agreement could not be specifically enforced. But that is not the

case here. There is no question about the date from which the lease was to take effect. It was merely a matter of recognizing the plaintiffs' possession by the execution of the lease.

8. It was said that Ex. A was not admissible in evidence for want of registration; but the very terms of the document show that it was not a present demise and therefore it did not require registration.

9. Two minor points were also taken both of which are answered by the pleadings: (1) it is argued that as it was the son of the defendant who entered into the agreement he ought to have been made a party. But para. 11 of the written statement of the defendant first party shows that he adopted the agreement; and it was never disputed that the son was acting for his father; (2) it was also argued that there was no finding that the defendants second party had notice of the plaintiffs' agreement. But this is admitted in the plainest terms in paras. 3 and 4 of the written statement of these defendants themselves. These were the only points that were discussed in the appeal and the appeal must be dismissed with costs.

Chatterjee, J.

I agree.