

(1939) 10 PRI CK 0005

In the Privy Council

Case No : Privy Council Appeal No. 86 of 1938

Probodh Kumar Das and others

APPELLANT

Vs

Dantmara Tea Co. and others

RESPONDENT

Date of Decision : 10-10-1939

Acts Referred:

Citation : (1940) AIR(PC) 1

Hon'ble Judges : Lord Macmillan, George Rankin and Jayakar, JJ.

Advocate : A.M. Dunne and J.M. Pringle, and L.P.E. Pugh and J.M. Pringle, for Respondents 1 and 7, respectively. Solicitors for Appellants, Callingham, Ormond and Maddox ; Solicitors for Respondents 1 and 7, T.L. Wilson and Co.

Judgement

Lord Macmillan -This appeal relates, to a tea garden in the district of Chittagong, known as the Kaiyacherra Tea Estate, which at one time belonged to the Kaiyacherra Tea Co. Ltd. The estate was mortgaged to Messrs. Gillanders, Arbuthnot and Co. of Calcutta who in 1930 obtained an order for the compulsory winding-up of the Tea Company. Thereafter the estate was put up to auction by the liquidators and purchased by Messrs. Gillanders, Arbuthnot and Co. Without obtaining any conveyance in their favour Messrs. Gillanders, Arbuthnot and Co. on 10th October 1931, by an interchange of letters of offer and acceptance agreed to sell the estate to one S. N. Roy, who paid the first instalment of the price and entered into possession. No conveyance was ever executed in pursuance of this contract of sale but the plaintiffs in the present suit, now the appellants, claim to have acquired at least in part the purchaser's rights under it. The estate has been the subject of a complicated series of transactions which it is fortunately not necessary to detail for the purpose of deciding the only question argued before their Lordships. These transactions are fully set out in the judgments of the Subordinate Judge and the High Court and account for the varied assortment of defendants to the suit.

The first defendants and respondents, the Dantmara Tea Co. Ltd., to whom alone it is necessary to refer, claim on the other hand to be the proprietors of the

estate under (1) a duly registered deed of assignment in their favour by the partners of Messrs. Gillanders, Arbuthnot and Co., dated 1st June 1934, which narrates inter alia the failure of S. N. Roy to complete the contract of sale of 10th October 1931, and (2) a duly registered deed of sale, also dated 1st June 1934, by the Kaiyacherra Tea Co. Ltd., and the liquidators of that company and by the partners of Messrs. Gillanders, Arbuthnot and Co. The position accordingly is that the plaintiffs have no title to the estate of which they are at least partly in possession, but rely on the contract of sale of 10th October 1931, while the defendants, the Dantmara Tea Co. Ltd., have a duly completed title to the estate but are not in possession of it.

The real bone of contention between the parties is the right to the export quota under the India Tea Control Act (24 of 1933), which was passed inter alia to regulate the export of tea from India. By S. 3 of that Act an Indian Tea Licensing Committee was set up and under other provisions of the Act it was entrusted with the task of determining the total quantity of tea, termed the "export quota," which the owner of each tea estate should be permitted to export, and of issuing export licenses. These quota rights are assignable and are of obvious value. The Licensing Committee in 1933-34 issued the export quota rights for the Kaiyacherra estate to the plaintiffs or to them and S. N. Roy. In 1934-35 the Committee, having become aware that the title to the estate was in dispute, declined to issue any export quota rights in respect of it. Subsequent to the execution and registration of the conveyance of the estate to the defendants, the Dantmara Tea Co. Ltd., the Licensing Committee have recognized them as entitled to the export quota rights of the estate. Thus the plaintiffs have in part at least possession of the estate but have no export quota rights, while the defendants, the Dantmara Tea Co. Ltd., hold the export quota rights of the estate but have not possession of it.

It is in these circumstances that the plaintiffs brought the present suit in which they seek to have it, declared that the Dantmara Tea Co. Ltd., and others have no right or title to the estate and are debarred from enforcing any right to the estate, including the right to sell tea under the export quota allotted to it or to transfer the quota rights to any person. They also seek an injunction. The defendants challenged the right of the plaintiffs to bring the suit and maintained that they had no title to sue. The Subordinate Judge rejected this plea and decided generally in favour of the plaintiffs but on appeal the learned Judges of the High Court were of opinion that the suit was not maintainable and dismissed it.

It was conceded by the appellants at their Lordships' bar that, apart from S. 53-A which was added by amendment in 1929 to the Transfer of Property Act, 1882, they had no case. But they contended that, notwithstanding that they had not chosen to sue for specific performance of the contract of 10th October 1931, and notwithstanding that they had taken no steps to complete their title, they were nevertheless entitled under S. 53-A actively to assert the rights of a proprietor in

virtue of the contract of 10th October 1931, and their possession. The position of the law under the Transfer of Property Act, 1882, before the addition to it of S. 53-A has on more than one occasion been expounded by their Lordships and reference may be made to the case in 61 IA 388, where the subject was fully discussed. It is clear that the appellants were well-advised in conceding that if they could not invoke Sec. 53-A they were out of Court.

In their Lordships' opinion, the amendment of the law effected by the enactment of S. 53-A conferred no right of action on a transferee in possession under an unregistered contract of sale. Their Lordships agree with the view expressed by Mitter J. in the High Court that "the right conferred by S. 53-A is a right available only to the defendant to protect his possession." They note that this was also the view of their late distinguished colleague, Sir Dinshah Mulla, as stated in Edn. 2 of his treatise on the Transfer of Property Act at p. 262. The Section is so framed as to impose a statutory bar on the transferor; it confers no active title on the transferee. Indeed, any other reading of it would make a serious inroad on the whole scheme of the Transfer of Property Act. It was suggested that by obtaining the export quota rights from the Licensing Committee the Dantmara Tea Co. Ltd., as persons claiming under the transferors, were enforcing a right in respect of the property against the appellants as persons claiming under the transferee, and could be enjoined at the appellants' instance from so doing, but in their Lordships' view there has been no enforcement within the meaning of the Section of any right against the appellants.

Their Lordships will accordingly humbly advise His Majesty that the appeal be dismissed. Separate printed cases were presented on behalf of the respondents, the Dantmara Tea Co. Ltd., and the respondents, the Chandranagar Tea Co. Ltd., who claimed to have acquired an interest in the estate, and were separately represented at their Lordships' Bar, but the appellants will pay only one set of costs to the respondents.