
(1935) 11 PAT CK 0035
In the Patna High Court

Ras Behari Mandal and Others

APPELLANT

Vs

Raja Jagadish Chandra Deo Dhaubal Deb

RESPONDENT

Date of Decision : 25-11-1935

Acts Referred:

Citation : AIR 1936 Patna 111

Hon'ble Judges : Rowland, J

Bench : Division Bench

Judgement

Rowland, J.—The appellants are mukarrari tenants in village Tamakpal under the Raja of Dhalbhum, the tenancy having been created by a lease in the year 1885. The terms of the lease are those of an ordinary agricultural tenancy. The suit was brought in 1930 by the landlord for a permanent injunction to restrain the defendants from collecting or digging and removing ghooting-stone (lime-stone) within the lease-hold property. The Munsif held that by the lease, mines and quarries did not pass but that the lessee obtained the surface rights. Therefore although the defendants were not entitled to dig or quarry for lime-stone, they did not exceed their rights by collecting and removing stones found on the surface.

2. The District Judge on appeal by the plaintiff held that ghootings not being animal or vegetable must be mineral and therefore must be taken to be excluded from the grant. In support of this decision he cites Barnard-Argue-Roth-Stearns Oil & Gas Co., Ltd. v. Farquharson (1912) AC 864, a case which does not support the view of the learned District Judge because the popular division of substances into animal, vegetable or mineral is in this case referred to only to be dismissed as irrelevant. The decisions relied on by the Munsif in Gandoo Mahata v. Nilmonnee Singh Deo Bahadur (1905) Cri LJ 526, and in Nawagarh Coal Co., Ltd. v. Behari Lal 1916 Pat 69, are more in point. The ordinary rule is that the lessor retains all rights in mines and quarries. This has been held to include open quarries as well as those which involve mining operations and tunnelling beneath the surface. But no case has been cited to me in which the tenant has been held

disentitled to use the surface and to take what he finds on the surface. The reasoning of the District Judge is really extraordinary when he says that the ghooting-stones which are found on the surface are not surface because they come to the top after rain, having previously been below the surface. He misses the point that the ghooting stones were on the surface at the time when they were taken. If that is so, the plaintiff cannot rely on their previous history to say that because they were once below the surface they must be for ever underground minerals. Reference was made to *Great Western Railway Co. v. Carpalla United China Clay Co., Ltd.* (1910) AC 83, where a grant reserving minerals was held to exclude a deposit of China clay although it was found near the surface. The case was decided on the terms of the particular grant. But a point in its decision was that excavation which was destructive of the surface was the necessary method of working it. There is no question of excavation in the collection and removal of the ghooting-stones lying on the surface within the defendants' tenure. I am of opinion therefore that the decision of the Munsif was correct and should be restored and the decision of the District Judge was erroneous and must be set aside. The Munsif's order for costs of the hearing before him is restored and the plaintiff will bear the costs of the hearing before the District Judge and in this Court.

3. Leave refused.