
(1928) 08 CAL CK 0016
In the Calcutta High Court

Soorath Nath Banerjee

APPELLANT

Vs

Bhabasankar Goswami and Others

RESPONDENT

Date of Decision : 15-08-1928

Acts Referred:

Contract Act, 1872 — Section 20

Citation : AIR 1929 Cal 547

Hon'ble Judges : Page, J; Mallik, J

Bench : Full Bench

Judgement

Page, J.—This is a suit brought to recover royalties or rent due under a mining lease. The defence which was urged before us in this appeal was that the lease was void u/s 20, Contract Act, which reads as follows:

Where both the parties to an agreement are under a mistake as to a matter of fact essential to an agreement the agreement is void.

2. The question that falls for determination is whether having regard to the facts proved in this case, the defendant could sustain such a defence. It appears from the evidence of the defendant himself that he had acquired possession of certain plots in this mauza with a view to being in a position to enable an assignee from him to carry on mining operations. There is no finding and it does not appear from the terms of the patta that it was intended by the parties to the patta that the colliery should actually be situate on the land which was the subject-matter of the lease and under the terms of the lease, if the defendant at any time so selected, he could surrender the lease on giving six months' notice and liquidating the dues that had accrued up to the date of surrender. The lease was effected in 1920 and untill August 1923 and so far as we are aware, up to the present time the defendant has not surrendered the holding. That would have been an easy way in which he could have got out of any difficulty that he felt in having under the lease obtained possession of the lesser area than he could profitably use for colliery purposes. I have asked myself why did not he surrender this holding under the terms of the patta, if he felt that it had imposed

upon him grievous obligations without commensurate compensation. I think the answer may well be that as the defendant himself admitted in the course of his evidence that he was proposing to resell this land and to assign the benefit which he could obtain under the potta to some other person the reason why the defendant has retained possession of the land under the potta was because he was waiting to see whether the market might not turn in his favour and he was not prepared either to surrender the holding or after two in a less satisfactory condition. I cannot help believing that if there had been a boom in the coal trade, there would have been no necessity for this suit to have been launched. Now, in order to bring the case within 8. 20 it was incumbent upon the defendant to prove inter alia that there was a common mistake of facts and that that common mistake was with respect to a fact essential to the agreement. The common mistake which is alleged before us is that whereas under the potta the subject-matter of the lease was "a plot of land measuring by reputation one hundred bighas" it turns out that it measures considerably less than 100 bighas. According to one estimate it measures 20 bighas and odd, according to the Settlement Khatian it measures 66 bighas and a gentleman employed in the coal trade called as a witness stated that on the 20 bighas it was not feasible to erect a colliery. Now, what was this plot of land which was the subject-matter of the potta? It is stated in the lease to be:

a plot of land measuring by reputation one hundred bighas commonly known as the field, of Kayattala in touzi No. 3522 of the Collectorate of Burdwan in the village of Mouja Kumardihi included in Pergannah Shergarh Police Station Ondal Sub-Registry Raneegange Chowki Asansole in the Collectorate District of Burdwan and in the recent settlement it has been recorded in our name from dag No. 1 to Reg. No. 9.

3. and later it is described as a plot:

which has been presently measured from dag No. 1 to dag No. 9 in the recent settlement.

4. Now what this land consisted of could have been ascertained by any body who elected to take the trouble to make the necessary inquiries from the office of the collectorate. But the complaint of the defendant is that he knew nothing about this, he never measured it and he made no enquiries for 3 years. Why not, if he really was placing reliance upon the exact measurement being 100 bighas? To that question no satisfactory answer has been given. In those circumstances I approach the issue whether there was a mutual mistake as to the fact essential to the agreement. I am not satisfied that the exact area of 100 bighas more or less was essential for the colliery purposes for which the agreement was arrived at. But be that as it may, until the suit was argued in second appeal before this Court, there had never been any allegation or suggestion on that the agreement was void upon the ground of the mutual mistake of the parties as to the extent of area leased Mutual mistake is not a ground set out in the memorandum of appeal, and not only has it never been the case presented on behalf of the

defendant in the lower Courts, but it is inconsistent with the case upon which he sought to defeat the plaintiff's claim for rent, for in the lower Courts the defendant contended that he was the innocent victim of a fraudulent misrepresentation as to the area on the part of the plaintiff. Both the Courts have negatived the charge of misrepresentation, fraudulent or otherwise, but such an allegation is inconsistent with the contention that both the plaintiff and the defendant were executing the potta under a common mistake of fact as to the extent of the area. In those circumstances, to my mind, the contention that the contract was void upon the ground of mutual mistake of fact essential to the agreement cannot be sustained and the defence fails. It was further contended that in any case the plaintiff was only entitled to a proportionate sum for royalty or rent in respect of those premises inasmuch as minimum royalty was Rs. 2,000 and that was based upon the area being 100 bighas at the rate of Rs. 20 a bigha.

5. For the reasons I have given I do not believe that the exact area leased was of the essence of the contract and from a perusal of the terms of the potta, in my opinion, a royalty of Rs. 2,000 was to be paid irrespective of whether the area in fact turned out to be 100 bighas or more or less than that area. In those circumstances, the claim for proportionate abatement also fails and, in my opinion, the defence which was presented before us was misconceived and the appeal must be dismissed with costs.

Mallik, J.

6. I agree.