
(1889) 07 CAL CK 0019
In the Calcutta High Court

Toomey

APPELLANT

Vs

Rama Sahi

RESPONDENT

Date of Decision : 01-07-1889

Acts Referred:

Citation : (1890) ILR (Cal) 115

Hon'ble Judges : Rampini, J;Pigot, J

Bench : Division Bench

Judgement

Pigot and Rampini, JJ.—This is a reference made by the First Munsif of Mozufferpore upon a point arising in a suit brought by the owner of the Kanti Indigo Concern against the defendant for damages on account of his alleged failure to cultivate indigo for that concern in the years 1293, 1294, and 1295, in accordance with the terras of an agreement entered into by him and dated the 13th of December 1882. The Munsif has referred to us the question whether by operation of law the word "assignees" can be imported into that agreement. The agreement was made with Baboos Mathura Das and Hanurnan Das, who assigned, or attempted to assign it to the plaintiff, and the plaintiff as such assignee now sues on that agreement.

2. The arguments of the two learned Counsel, who appeared before us on behalf of the plaintiff, went over a very wide range. In stating our opinion that the conclusion of the Munsif was right, we shall limit ourselves to one ground only. We do not propose to deal with the general questions with regard to the rights of persons to whom contracts of various kinds are assigned in this country. Assuming for the purposes of the argument as a general rule the assignability of contracts in this country, and the power of the assignees to sue upon them, we do not think that in the present case the contract was one, which, upon a fair construction of it, can be held assignable so as to give the assignee a right to sue upon it.

3. This agreement is described by the defendant Rama Sahi as an "engagement for cultivation of indigo on four biggahs of first class land by six and a half cubit

measuring pole within the area of mouza Beerpore Tuppeh Bhatsala, Pergana Besarrah out of my holding as per details at foot from 1290 to 1296 Fasli on receipt of Rs. 16 as advance." It provides that "in the commencement of the month of Assin and Kartick I or my heirs in company with the Amlah of the concern shall on the requisition of the above-named Baboos get the said four biggahs out of my holding as selected by the Amlah of the concern and the above-named Baboos measured." When it is fit for sowing indigo the Baboos or their Amlah shall get it measured. "After the measurement in Falgoon or Chait, I or my heirs shall sow it taking indigo seeds and tandi from the concern. When the indigo will be fit for weeding I or my heirs shall forth with weed, re-weed and turn it up...to the extent necessary according to the directions of the Amlah of the concern." When the indigo is fit for reaping I shall "reap and load it on carts according to the directions of the Amlah of the concern." Then again "if any portion of the said indigo land is in the judgment of the Amlah of the concern of the above-named Baboos found bad, I or my heirs shall in lieu of such bad land again get measured some other land in my holding," and, on the land so measured "sow Bhadbon crops only which will be reaped in Bhadur." Then there is a provision that he is not to sow on the land measured any crop which may cause obstacles to the cultivation of indigo. Should he do so, "the Amlah of the concern of the above-named Baboos shall be at liberty to destroy such crops, and I or my heirs shall not oppose the destruction." Then as to the bad land which the Baboos or their Amlah give up on taking other land in exchange, he is to be entitled to sow it as he pleases. Then there is a provision for payment of damages to the Baboos in case of his neglecting to cultivate.

4. We think that this contract is one which may reasonably be viewed as having been entered into with reference to the personal position, circumstances, and qualifications of the Baboos and their Amlah. It makes the Baboos and their Amlah sole judges in matters of great importance; and it does seem to us that it would be an unreasonable construction of this agreement were we to hold that it could possibly have been in the contemplation of the provision that any persons, the servants of any persons, the managers of any concern to the owners of which the Baboos may please to assign this contract, were to stand in the place of the Baboos and exercise the powers conferred by this agreement on the Baboos and their Amlah. When considerations connected with the person with whom a contract is made form a material element of the contract, it may well be that such a contract on that ground alone is one which cannot be assigned without the promisor's consent, so as to entitle the assignee to sue him on it.

5. We have not before us the question whether or not the benefit of such a contract as this would have passed to the executors of the Baboos, supposing they had any. We should perhaps in that case be disposed to construe the contract as one which, together with the right to sue on it, the defendant might reasonably be supposed to have intended to be passed to the executors carrying on the same concern. This of course is but an obiter dictum, as the question does not arise in the case.

6. We may, with reference to the principle to which we have just referred, that when considerations relating to the person with whom a man is willing to contract, as, if personal relations between the parties, or the personal condition or qualifications of the promisee, form an element or may fairly be supposed to have done so in the entering into of the contract, mention a passage in Vice-Chancellor Wood's judgment in the case of *Stevens v. Benning* 1 K. & J. 168, at pp. 175-6. In this case we limit ourselves to the proposition that this contract cannot be construed as one which was entered into save with reference to the person, qualifications, status, and position of the Baboos of the concern of which they had charge. Therefore, we hold that neither by importation into the agreement, nor by any equitable principle, is the plaintiff entitled to sue in this case in his own name as for a breach of contract.