**(1914) 05 CAL CK 0009**

**Calcutta High Court**

**Case No:** None

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| Lakhan Jena and Others | APPELLANT |
| Vs | |
| Arjun Naik | RESPONDENT |

**Date of Decision:** May 15, 1914

**Citation:** AIR 1914 Cal 202 : 24 Ind. Cas. 387

**Hon'ble Judges:** Beachcroft, J; Asutosh Mookerjee, J

**Bench:** Division Bench

**Judgement**

1. This is an appeal by the defendants in a suit for recovery of money due on a contract. The circumstances under which the Courts below have concurrently sustained the claim of the plaintiff may be briefly recited. In 1909, at a public auction held at the instance of Government, the plaintiff purchased for a sum of Rs. 445 the roadside lands on the bank of the river Bhargavi situated on the ninth mile of the Jagannath road, together with what is called the dandidari right, for the year 1909-1910. The term dandidar literally means a measurer and is applied to signify a broker who negotiates the sale of paddy and other produce in a market place and receives as remuneration for his services a commission from the seller and the buyer who may choose to employ him. The plaintiff, as the highest bidder, was accepted as purchaser of the lands and of the dandidari right for the period mentioned : and it is clear from the lease granted to him by Government on the 6th May 1909 that he became entitled to occupy the lands for one year and to exercise the calling of a broker in the market held thereon during that period. The case for the plaintiff is that on the 25th April 1909 the defendants took an assignment from him of the dandidari right for a consideration of Rs. 622-8 that they commenced at once to exercise the calling of a broker in the market place by virtue of the Government license which was made over to them, and that although they have profited by the transaction, they have withheld payment of the money they had agreed to pay. The plaintiff consequently commenced this action on the 19th July 1909 for recovery of the consideration with damages for unlawful detention of his money. The defence was a denial of the alleged transaction in every particular. The

Court of first instance found in favour of the plaintiff on the merits, and decreed the suit for the amount claimed as consideration money. Upon appeal, the Subordinate Judge has confirmed this decree. He has taken the same view of the facts as the primary Court and has also overruled the contention of the defendants that the right could be validly transferred to them only by a registered instrument, as, in his opinion, the transaction was not a sale but a sub-lease. On the present appeal, the decree of the Subordinate Judge has been assailed substantially on three grounds, namely, first, that the plaintiff has no title, as the alleged dandidari right tends to create a monopoly and should not be recognised as a legal right by any Court of Justice, secondly, that the dandidari right, if recognised in law, is a right personal to the grantee from Government and cannot be transferred, and thirdly, that if the dandidari right be deemed transferable, a valid transfer can be effected only by a registered instrument. These positions have been controverted by the respondent as wholly untenable, and it has further been urged on his behalf that it is not open to the defendants to impeach the title of the plaintiff.

2. In support of the first point, reference has teen made to the cases of Shaik Kalu v. Ram Saran Bhagat 1 Ind. Cas. 94 : 9 C.L.J. 216 : 13 C.W.N. 388 at p. 399. and Somu Pillai v. Municipal Council, Mayavaram 28 M. 520 and it has been urged that every arrangement which places a restriction upon a man''s right to exercise his trade or calling tends to create a monopoly and is void as against public policy. This principle has clearly no application to the case before us. The Government allows a market to be held on its land and takes measures to restrict the admission of brokers. We cannot see that there is anything illegal or contrary to public policy in this action. The principle recognised by the House of Lords in Rossi v. Edinburgh Corporation (3) (1905) App. Cas. 21 at p. 26 : 91 L.T. 668 namely, that it is the common right of all His Majesty''s subjects to open their shops and to sell what they please, which can be restrained only by the Legislature, is of no assistance to the appellants. The broker who receives a license, authorising him to exercise his calling in the market, cannot force himself upon any seller or purchaser : he is at liberty to enter the market and to exercise his calling, if anybody should employ him. We are not prepared to hold that this is in any way open to objection.

3. In support of the second point reference has been made to Hill v. Tupper 2 H. & C. 121 : 133 R.R. 605 : 32 L.J. Ex. 217 : 9 Jur. (n.s.) 725 : 8 L.T. (n.s.) 792 : 11 W.R. 784. to show that the right to exercise the calling of a broker is a personal right, not assignable in law. The case mentioned does not lend any support to this contention : it merely rules that where a canal Company has granted to a person the sole and exclusive right of putting pleasure boats for hire on their canal, the grantee does not acquire such an interest as would enable him to maintain an action in his own name against a person who has disturbed his right. This principle is clearly of no assistance to the appellants. On the other hand, the very fact that the right is granted by Government to the highest bidder affords some indication that the personal element does not enter into consideration when the grant is made.

Further, there is evidence to show that the right is frequently transferred and the transferree is allowed to exercise the right under the license in the same manner as the transferor. In the present case, the Courts below have found that the appellants as transferees have exercised the right without interruption or hindrance by the officers of the Government. There is consequently no force in the second contention.

4. In support of the third point, it has been urged that the right which the plaintiff purported to transfer to the defendants was intangible and could have been transferred only by a registered instrument. There is no force in this contention, because the defendants are at least licensees under the plaintiff and as they have exercised their calling without interruption or interference, they at any rate are not entitled to contend that the plaintiff has no title or that they themselves have acquired none from him. This leads us to the important ground taken on behalf of the respondent in support of the decree of the Subordinate Judge.

5. It is well settled that the rule of estoppel, which binds landlords and tenants, mortgagors and mortgagees, bailors and bailees, applies to employees and contracting parties generally who cannot accept the benefits of the contract and yet when called upon to perform their duties under it repudiate it as made without right or as otherwise wanting in force, provided the contract is not actually in violation of law or wholly -void. The assignee or the licensee of any right, accepted and acted under, is accordingly estopped to deny the authority from which the right proceeds. This is well illustrated by cases where right under a patent has been transferred and it has been held that the assignee or licensee of the patent, apparently valid and in force, who has acted under it and received profits from the sale of the patented article, is estopped to deny the validity of the patent in an action by the patentee to recover royalties or to obtain an account. Reference may be made, amongst others, to the cases of Lawes v. Purser 6 El. & Bl. 930 : 106 R.R. 868 : 26 L.J. Q.B. 25 : 3 Jur. N.S. 182 : 5 W.R. 43 : 119 E.R. 1110, Noton v. Brooks 7 H. & N. 499 : 126 R.R. 540 : 8 Jur. N.S. 156. Crossley v. Dixon 10 H.L.C. 293 : 138 R.R. 160 : 11 E.R. 1039 : 32 L.J. Ch. 617 : 9 Jur. N.S. 607 : 8 L.T.N.S. 260 : 11 W.R. 716 : 1 N.R. 540 and Kinsman v. Pakhurst 18 How 289 : 15 Law Ed. 385.. In the case last mentioned, the defendants, under the agreement from the patentee, manufactured and sold the patented article, actually received profits therefrom, and when called upon to account questioned the validity or the patent. The Court overruled the defence, and held that they could no more be allowed to deny the title of their grantor or licensor and retain the profits to their own use than an agent who has collected a debt for his principal could insist on his keeping the money upon an allegation that the debt was not justly due : even if the patent was assumed to be invalid, that did not render the sales of the machine illegal, so as to taint with illegality the obligation of the defendants to account. Similarly in Sharp v. Taylor 2 Phil 801 : 78 R.R. 298 : 41 E.R. 1153 where a vessel engaged in an illegal trade carried freight which came into the hands of one of the part-owners, and on a bill filed by the other part-owner for an account the

defendant relied on the illegality of the trade, the defence was overruled as not available. It is worthy of note that this rule of estoppel was applied in Noton v. Brooks 7 H. & N. 499 : 126 R.R. 540 : 8 Jur. N.S. 156 even though it was argued that the invalidity of the patent would make the agreement sought to be enforced a contract for the grant of a monopoly and consequently void. In the case before us, it has been found that the defendants, as assignees or licensees from the plaintiff, have exercised their calling and have made profits which would otherwise have accrued to the plaintiff himself in due course : and yet when called upon to pay the consideration they had promised, they urge as a defence that the plaintiff has acquired no valid title from Government. This defence can only be characterised as disingenuous and is clearly not available to the defendants.

6. The result is that the decree of the Subordinate Judge is affirmed and this appeal dismissed with costs.