

(1880) 09 CAL CK 0004

Calcutta High Court

Case No: None

Kokil Bag

APPELLANT

Vs

Nemai Charan Dhabal
and Others

RESPONDENT

Date of Decision: Sept. 9, 1880

Acts Referred:

- Registration Act, 1877 - Section 50

Citation: (1881) ILR (Cal) 534

Hon'ble Judges: Mitter, J; Maclean, J

Bench: Division Bench

Judgement

Mitter, J.

(who, after stating the facts, continued).-The Rajah and Madhub and Narain Mondul have appealed against the result of the case. It is contended on their behalf that specific performance cannot be decreed, and that the agreement with the plaintiff having been reduced into writing cannot be proved by oral evidence. It is further contended, that the oral agreement cannot prevail against the latter registered lease.

2. Now the plaintiff sues on an oral contract to execute a mokurari lease, which has never been reduced into writing. It is true that the raja, at first intending to carry out that contract, had the lease drawn up in writing; but the transaction was not completed by delivery and registration. Therefore, under the circumstances, the objection that parol evidence is not admissible, does not arise; in fact, it was not seriously pressed on behalf of the appellant.

3. Taking it then as established, that the raja-defendant entered into an oral agreement to execute a lease in the plaintiff's favour, the next question is, whether specific performance can be enforced. If the case were governed by the Specific Relief Act, we should have no hesitation in saying that Section 27 would apply to this

case. Madhub and Narain Mondul are clearly, on the finding of the lower Court, transfers under a subsequent title with notice of the original contract to the plaintiff. But although that Act (I of 1877) is not in force in the district of Manbhoom, we may fall back upon the general rules of equity, which are undoubtedly, in the plaintiff's favour.

4. It has indeed been argued that, u/s 48 of the Registration Act, the oral agreement with the plaintiff not being accompanied or followed by delivery of possession, cannot be enforced against the registered lease held by Madhub and Narain Mondul. No doubt, the words of that section (48) are positive, and they have been interpreted by Pontifex, J., as meaning "that the only oral alienations of which the law can take notice in competition with registered instruments, are those which are properly established by evidence of possession"; and again "unless the oral alienee was in possession, the Courts would now be excluded from considering any equity which he might have against a subsequent alienee by registered deed"-Euzludeen Khan v. Fakir Mahomed Khan (I. L. R. 5 Cal. 346). But that case turned upon the construction of Section 50 of the Registration Act, and the issue was between two deeds conveying the same property, one registered and the other not; and Garth, C.J., in his judgment, expressly states, that no question of equity arose; and also that the equitable doctrine of notice might have been applied if it could be shown that the subsequent purchaser had notice of the prior unregistered conveyance.

5. In this case we have a finding that the alienee under the registered lease had notice of the oral agreement to execute a lease in favour of the plaintiff, and having looked at the evidence, we see that they were present when he paid a portion of the consideration-money.

6. It appears to us, that if we adopt the principle that no equity is to be considered where an oral agreement to alienate is not followed by possession, the 27th section of the Specific Relief Act, as illustrated (b), would be rendered a dead letter wherever it applies, when competition arises between an oral agreement to alienate unaccompanied by possession, and an alienation by registered deed with notice of the previous agreement; but we are not compelled to adopt this conclusion. The subject has been fully considered in the case of Waman Ramchandra v. Dhondiba Krishnaji (I. L. R. 4 Bom. 126), and the judgment of Westropp, C.J., at pp. 146 to 154, discusses the effect of actual notice and the application of the English rules of equity to mofussil cases, and that too in a case to which the Specific Relief Act did not apply, as it does not in these cases before us. It is unnecessary to recapitulate the reasons upon which the judgment of Westropp, C.J., are founded. It is sufficient to say that we follow them, and consider that they apply to these cases.

7. The foregoing remarks apply equally to Appeal No. 1595. We therefore dismiss these appeals with costs; but we think that the decree of the Munsif must be amended, for in its present form it will not have the effect that the cases require. We think that it should declare the leases by the raja-defendant to Madhub Mondul and

Narain Mondul void as against the plaintiff; and that, on the plaintiff paying Rs. 100 to the raja-defendant, the latter shall execute mokurari pottahs to the plaintiff, receiving from him kabuliats in the terms of the agreement between them.