

(1872) 03 CAL CK 0003

Calcutta High Court

Case No: None

Kasinath Biswas and
Others

APPELLANT

Vs

Gangadhar Sirkar and
AnotherRESPONDENT

Date of Decision: March 12, 1872

Judgement

Macpherson, J.

The defendant appeals and contends that the decree is wrong, because there was a material and important mis-description of the property in describing it as bounded on the south by Ektar Sirkar's land; because the land sold is deficient in quantity, inasmuch as there are not nearly twenty bigas, unless all the land down to the present low-water mark is included; because the plaintiffs have no title to such portions of the land as are accretions to lands of the plaintiffs which are themselves below high-water mark; because the rent payable to the zemindars is more than what is stated in the advertisement; because the plaintiffs chose to rescind the contract of sale, and because the Receiver was a necessary party to the suit. The last of these objections is, tinder the circumstances, a purely technical objection, on which, as it in no way affects the merits of the case, we should not (with reference to the provisions of s. 350 of Act VIII of 1859) be justified in disturbing the judgment of Phear, J. It is sufficient to say that it was by the order of the Court that the Receiver's name was struck out of the plaint, and that it is clear that the appellant has been in no degree damnified by its being so struck out.

3. There is no doubt that the southern boundary of this property was not given in the advertisement with such perfect accuracy and distinctness as it might have been, and perhaps ought to have been. But as regards this and certain other of the objections raised on behalf of the appellant, it is to be borne in mind that he, as having long been the tenant of the premises, and intimately acquainted with then, occupies a very different position before the Court from that which would be the position of a stranger previously unacquainted with the property for which he was bidding. The case of Colby v. Gadsden (34 Beav., 416) is an authority to the effect (and the rule is in itself perfectly fair and

equitable) that, where a purchaser is personally acquainted with the real state of the property sold, he cannot, on account of a circumstance of which he was all along perfectly aware, and which was patent, either reject the contract, or demand an abatement of price.

4. On this question of mis-description, in giving Ektar Sirkar's land as the southern boundary, Phear, J., says:--"It is perfectly certain, from the testimony of Gangadhar (the appellant) himself that he was not in the least deceived on this point. He was himself the occupant of the premises in question for at least the last eight years; and he himself, when under examination, described the ghat and road as a public ghat and road. He said that people bathed at the ghat, and that cargoes were brought to the ghat, and carried along the road to the screw-houses. It is perfectly impossible that he could at any time have supposed that the vendors pretended to sell this road or ghat as private property." We entirely agree with the learned Judge in thinking that there is no doubt whatever that Gangadhar, who had himself been in actual occupation of these premises for many years, knew perfectly well that the ghat and road were not included in the sale, and that he was not in fact misled by the description. No one, on reading the advertisement, could seriously have believed that it was intended to include the ghat and road in Lot 7. The advertisement would certainly have made special mention of property of such peculiar value as a ghat, such as this is admitted to be, if there had been any purpose of selling it. The inaccuracy of description is really in itself very slight: for Ektar Sirkar's land is, in truth, the southern boundary, except for the intervention of this public road; and, indeed it may be, for all that appears to the contrary, that the land on which the public road is, may have been a portion of Ektar Sirkar's land. As a further proof that the appellant must have known that there was no idea of selling this ghat and public road, it is to be observed that in the Collectorate chitta of 1847, the land held by the Biswas family is described as lying "on the north of the passage to the ghat of the Mukhopadhya of Mauza Sulkea."

5. The only difficulty we have felt on this part of the case arises from the extraordinary, and so far as we can see unwarrantable, statement made by the plaintiffs' attorney in his letter of the 9th August 1870. In that letter it is said that Ektar Sirkar's land was given as the southern boundary, "because the parties herein claim this piece of ghat-land as their property;" and that, at a measurement made in the previous April at which the appellant himself was present, the chur-land was found to measure 20 bigas, a little more or less, "exclusive of the said ghat-land." How the plaintiffs' attorney came to write this letter is not explained. Rending it along with the words used in the advertisement, it might lead to the inference that the parties did mean to include this road and ghat-land in Lot 7. The letter, however, does not expressly say that it was so intended. On the contrary, it immediately proceeds to say that there are the full 20 bigas mentioned in the advertisement, without including the ghat-land. The letter moreover was not written till nearly a month after the sale, and it clearly could not have influenced the conduct of the parties before or at the sale. Under the circumstances, we do not think we ought to allow it to affect our judgment in the matter, as we are perfectly satisfied that, in fact, at the time

of the sale, the plaintiffs had no intention of selling, and the appellant did not suppose them to be selling, the ghat or road-land.

7. The question as to the quantity of land in Lot 7, depends mainly on the plaintiffs' right to measure down to low-water-mark. Here again the appellant's personal acquaintance with the property for which he was bidding has a most important bearing. The appellant knew that he himself, as tenant in occupation, had for many years held the land down to low-water mark, using it for the special purposes of the business which he carried on. He knew also that the premises did not contain anything approaching to 20 bigas, unless all the land down to low-water mark was included. Therefore we have no hesitation in finding as a fact that the 20 bigas by estimation, mentioned in the advertisement, and for which the appellant bid, were known by him to include all the land down to low-water mark. But Mr. Marindin contends that the plaintiffs, on their own showing, can have absolutely no title to much of this land inasmuch as it is admittedly land which has come into existence by accretion to other land of the plaintiffs lying below high-water mark. In the Collectorate chitta of 1847, so often referred to and relied on by the appellant as supporting his objections to quantity, and to the statement in the advertisement as to the rent, this parcel of land is described as lying "on the west of the low-water of the Ganga," that is to say, being bounded on the east by the low-water mark. So that so far as the Government was concerned, the plaintiffs were entitled to hold down to the then low-water mark. But if the Government (or the Crown) granted the land down to the low-water mark--and in this case it must be presumed they have granted it, from the recognition of the right which is to be found in the chitta of 1847--the plaintiffs are entitled to all subsequent accretions. No authority has been quoted to us which supports the contention that there cannot possibly be any title in the plaintiffs to accretions to lands themselves below high-water mark. But the case of *Scrutton v. Brown* (4 B. & C. 485) is an express authority that those who have a grant of the land down to low-water mark will take all subsequent accretions. In his judgment in that case, Bayley, J. says:--"If the sea leaves a parcel of land, the piece left belongs to the person to whom the shore then belongs. The land between high and low-water marks originally belonged to the Crown, and can only rest in a subject as the grantee of the Crown. The Crown by a grant of the sea-shore would convey not that which at the time of the grant is between the high and low-water marks, but that which from time to time shall lie between those two termini. Where the grantee has a freehold in that which the Crown grants, the freehold shifts as the sea recedes or encroaches." And Holroyd, J., says:--"I am of opinion that, supposing the bail to be granted, it follows as a consequence, that the grantee, with respect to the shore, will stand in the same situation as the grantor would have stood if he had not executed the deed. The grantor conveyed the whole of his shore between particular boundaries: he had therefore no part of it remaining in him, and the grantee stood in his situation. Then the accretion follows as an accessory to the principal. The change being gradual, it becomes part of the shore, and belongs to the person who had the shore at the time when the accretion takes place." These principles appear to us to apply equally in this country, and exactly to meet the objection which has been raised in this case.

8. We think, therefore that the plaintiffs were entitled to include in their measurement all the land down to low-water mark, and that there was no mis-statement of quantity in the advertisement.

9. As the Collectorate chitta of 1847 showed that the revenue payable for this land to Government was fixed at Rs. 5-5-4 per biga, there seemed to be some force in the argument that there must be a substantial error in stating that the rent paid to the zemindar was only Rs. 29-9-4. Thinking it probable that the appellant might be entitled to some abatement in respect of this matter, we postponed the farther hearing of the appeal, and gave the parties leave to go into evidence on this point. Evidence was subsequently given on behalf of the plaintiffs, the result of which is, that we consider it to be clearly proved that the statement in the advertisement is correct, and that no more than Rs. 29-9-7 have, for many years past, been paid; there being nothing to show that more than that sum has ever at any time been actually paid. Kasinath Biswas, one of the plaintiffs, was examined, and it would seem that, even if no better title can be proved, the tenure is at least one with a right of occupancy, which has been held by the Biswas family since 1231 (1842). It may be that the revenue payable by the zemindar to Government is Rs. 5-5-4, and that is more than the zemindar receives from his tenant, but this does not affect the question whether there was any mis-description or mis-statement as to the rent paid to the zemindar. So, the tenure may or may not be one the rent of which may be enhanced. With that we have nothing to do at present. The plaintiffs never professed to be selling a freehold, or an unenhanceable tenure and it was for the appellant to have satisfied himself before the sale as to the precise nature and details of the tenure. If persons, without satisfying themselves as to the real title to the property, choose to buy at sales where the party selling professes to sell merely his "right, title, and interest," such as it is, they have no one but themselves to blame if they afterwards find they do not get such a title as they could have wished. At such a sale it is before he bids, and not afterwards, that an intending purchaser should inquire into the nature of the title which the vendor can make.

10. We entirely concur with Phear, J., in the opinion he expresses as to the objection that the plaintiffs rescinded the contract. They clearly never did anything of the sort. They have all along pressed the appellant to fulfil it. There has been no laches or delay on their part to disentitle them from asking for a decree for specific performance. They have, in fact, never ceased to insist upon their rights as against the appellant, and the delays which have occurred, really did not arise from any laches on their part, or on the part of the Receiver. We think that the decree appealed against should be affirmed, and that this appeal should be dismissed with costs on scale No. 2.

(1) The Attorney General v. Chambers, 4 De. G.M. & G., 206.