

(1917) 11 CAL CK 0007**Calcutta High Court****Case No:** None

Jiban Krishna Chakravarti

APPELLANT

Vs

Ramesh Chandra Das and
Others

RESPONDENT

Date of Decision: Nov. 22, 1917**Citation:** 44 Ind. Cas. 225**Hon'ble Judges:** Smither, J; Charles Chitty, J**Bench:** Division Bench**Judgement**

Charles Chitty, J.

In my opinion this appeal should fail on the short ground that the contract on which the plaintiff sued was embodied in the solenamah filed on 14th July 1910, and that that solenamah having been set aside by this Court there was no contract subsisting which the plaintiff could put before the Court. The learned Counsel for the plaintiff appellant conceded that if the Court held that the solenamah was the contract between the parties he had no case. The plaintiff in seeking specific performance of an agreement to lease as against defendants Nos. 1 to 3 alleged in his plaint that there was an agreement with the plaintiff that defendants Nos. 1, 2 and 8 would grant a patta to him in his own name at a jama of Rs. 13 per annum from the date of the execution of the said solenamah. That appears to me to be an obvious device to get out of the difficulty, which arose, of the solenamah being no longer enforceable. It is to be noted that the Munsif, who decided in favour of the plaintiff, stated in his judgment that the solenamah and the solenamah alone was the contract between the parties. He says: "During the pendency of the appeal, the present plaintiff and the defendants came to terms and it was arranged that the plaintiff would hold the land as a kaimidar rayait under the defendants on an annual rental of Rs. 13. The terms were embodied in a solenamah which was filed in Court and according to which the appeal was disposed of and the decree prepared." Later in his judgment he says: "There is no evidence worth the name that there was any other contract besides what was embodied in the solenamah." The learned District Judge appears

to have taken the same view. He says: "This contract was embodied in a solenamah filed in Suit No. 467 of 1908 brought by defendants Nos. 1 to 3 for ejectment against Bankim and Pulin, sons and heirs of Sarbanund Barua, the former under-tenant in possession." Later he says: "Admittedly the contract is bound up in the solenamah. There is no contract existing independently of the solenamah. The solenamah has been set aside and the contract must, I think, go with it." That being the case, it seems to me to follow as a matter of course that the solenamah having been set aside by the Court the plaintiff could no longer enforce it as a subsisting contract. Nor do I think that he can fall back, as he now endeavours to fall back, upon some verbal agreement between him and the defendants Nos. 1 to 3 as to the lease which was to be given. In his plaint he says that the lease was to be in his own name, but the contract in writing which he took and accepted was for a lease in the name of his minor clients Baukim and Pulin, who he now says were his benamidars. This, in my own opinion, is sufficient to dispose of the plaintiff's case. But the learned District Judge has given other reasons which would also prevent the Court from granting the plaintiff the relief which he claims, namely, specific performance of the contract. I do not think that it is necessary for me to go into those matters but I think that I ought to say that, in my opinion, the whole circumstances of the case are altogether discreditable to the plaintiff. He purported to buy the interest of his minor clients from their mother while the suit was going on. He allowed the suit to continue and prosecuted it nominally for them but really for himself. He then procured this solenamah also for his own interest. It will be a matter for further consideration whether his conduct as a Pleader should not be reported to the Full Court for such action as the Full Court may think fit to take against him. I need not go into that at the present time. I am of opinion that the plaintiff certainly cannot be allowed the equitable relief which he claims. It would indeed be unfortunate if the Court were bound in law to grant relief to a man who has behaved as the plaintiff has behaved. I would accordingly dismiss the appeal with costs.

Smither, J.

2. I agree that the appeal should be dismissed with costs.