Janardan Kishore Lal Sinha Deo and Others Vs Sib Prasad Ram and Others
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None

Court: Calcutta High Court

Date of Decision: April 8, 1915

Citation: 36 Ind. Cas. 179

Hon'ble Judges: Teunon, J; Fletcher, J

Bench: Division Bench

Judgement

Fletcher, J.
This is an appeal preferred by the plaintiffs against a judgment of the learned Subordinate Judge of Burdwan. The suit was

brought to recover the arrears of what is called the minimum royalty in respect of certain mining leases that were held by the defendants as

transferees from the original lessee. The amounts sued for were a portion of the royalty payable for 1312, the whole of the royalty payable for

1313 and 1314 and the royalty up to the Pous hid of 1315 B.S. The only question that was really in dispute between the parties as to the amounts

payable was as to whether the plaintiffs had appropriated certain specific payments that had been made by the defendants towards the payment of

certain other rents that were then in arrears. The learned Subordinate Judge found that point in favour of the defendants. The payments or the

directions as to the mode in which the money should be applied were all in writing. There does not seem to be any doubt that the learned Judge

arrived at a correct conclusion, when he took the view that the payments that had been made by the defendants ought to be given credit to them as

against the amount sued for in the present suit. That is the only point in dispute between the parties in this appeal and I think that the view adopted

by the learned Judge of the Court below is correct. The present appeal, therefore, fails and ought to be dismissed. We make no order as to the

costs.

Teunon, J.

2. I agree.

In No. 216.

Fletcher, J.

3. This is an appeal by the plaintiffs from a decision of the learned Subordinate Judge of Burdwan. The plaintiffs brought the suit to recover the rent

payable to them under two leases, the leases being mining leases, and the amounts sued for were not only the minimum royalty but also the excess

royalty. In the present appeal, only one question arises and that is this: The learned Judge has disallowed a certain portion of the plaintiffs" claim,

on the ground that subsequent to the date on which the amount disallowed became due the present plaintiffs instituted in the Court of the learned

Subordinate Judge another suit which came to trial and did not include this portion of their claim. Shortly it may be stated that in the former suit

certain instalments of the minimum royalty were sued for. But the plaintiffs omitted from their claim a portion of the minimum royalty which became

due in the Bengali year 1311 and 1312, on the ground that those amounts had been satisfied by the appropriation of certain payments that had

been made to the plaintiffs by the defendants. In the former suit, the Subordinate Judge found that the payments that had been made by the

defendants should be applied towards the payment of certain instalments subsequent to the year 1312. The plaintiffs in that suit made no

application to the learned Subordinate Judge to amend their plaint, nor did they attempt in any way to get payments of these sums that became due

earlier than the amounts sued for in the earlier suit. The plaintiffs, therefore, in the present suit claimed not only the amounts that were due

subsequent to the date of the decree in the former suit but those earlier amounts which were not sued for in the earlier suit. The only question we

have to decide is, "Are the plaintiffs entitled to recover these portions of the minimum royalty payable for parts of the years 13U and 1312?"" Order

II, Rule 2, CPC provides that "every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action;

but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court."" Sub-rule (2) of the same rule

provides that where the plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in

respect of the portion so omitted or relinquished,"" It is said that that rule does not apply to an accidental or involuntary omission to sue. But the

authorities are all the other way. The authorities seem to me to be clear and conclusive that the omission of a plaintiff to sue is covered by the rule

that I have referred to, whether the omission be accidental or involuntary or otherwise. That is quite clear from the judgment of the Judicial

Committee in the case of Moonshee Buzloor Buheeni v. Shumsoonnissa Begum 11 M.I.A. 551 : 8 W.R. 3 : 2 S. P.C.J. 59 : 2 Sar. P.C.J. 259 :

20 E.R 208. The words of the CPC that were then in force are not substantially different from the words that now appear in Order II, Rule I. In so

far as there is any variation, the variation is not in favour of the appellants but rather against them. That case has also been recognised and followed

in this Court in the case of Radha Kishore Debia v. Ram Coomar Chowdhry 12 W.R. 79 : 3 B.L.R.A.C. 265 and also in a later decision of Mr.

Justice Mookerjee sitting alone in the case of Syed Abdulla v. Hurkishen Singh 2 C.L.J. 490. These decisions have not, in any way, been departed

from and although, as the learned Senior Government Pleader says, there may be some hardship in a case of an accidental omission, it is quite

obvious that the Court cannot cut down the clear and distinct words of the Statute, even if the Court thinks that it is a case of great hardship to the

plaintiff. It seems to me that, on the point raised in the present appeal, the learned Subordinate Judge came to a correct conclusion. 1 would,

therefore, dismiss the present appeal. In this case also, we make no order as to costs.

Teunon, J.

4. I agree.

In No. 208.

Fletcher, J.

5. This is a cross-appeal to Appeal No. 216 of 1913, preferred by the defendants against the judgment of the learned Subordinate Judge in so far

as it relates to what he has called in his judgment the excess royalty. The first point to determine in this appeal is are the plaintiffs entitled to sue in

this suit for what is known as the excess royalty for the years 1312 to 1316."" The leases under which the property is held do not make any

distinction between the minimum royalty and the excess royalty, excepting that the minimum royalty is payable by monthly instalments in any event.

But the whole of the royalty is payable under one and the same contract and it arises out of the same bundle of facts. It is quite clear on other

mining leases that the causes of action as regards the minimum royalty and the excess royalty are in fact the same. If that is so, then the plaintiffs are

in this difficulty. They brought the former suit in which they claimed only the minimum royalty. In the present suit, they have claimed royalty for the

years 1312 to 1316. In the former suit they could have sued for the excess royalty for the years 1312, 1313 and 1314, and that not having been

done, it seems to me that Order II, Rule 2, Code of Civil Procedure, prohibits them from suing for those amounts in the present suit. Those clearly

ought to have been included in the former suit.

6. Then it is said that the learned Subordinate Judge in the former suit gave the plaintiffs leave to reserve their cause of action as regards the excess

royalty. Petitions seem to have been presented to the learned Judge in that view and the learned Judge, so far as the order-sheet shows, seems to

have assented to that mode of the plaintiffs'' suing. But Order II, Rule 2(3), does not provide for the learned Judge authorizing the plaintiffs to split

up their causes of action but only authorises the Court to allow the plaintiff to pursue the reliefs in respect of the same cause of action at different

times. I do not think that the order of the learned Judge giving leave to the plaintiffs to reserve their cause of action as regards the excess royalty

was authorized by the law, and I think, therefore, that they are brought back to what was raised in the last appeal (No. 216) that these sums

formed a portion of the same cause of action, as the minimum royalty. These sums of the years 13 2 to 1314 ought to have been sued for in the

former suit and, they not having been sued for, under the provisions of Order II, Rule 2, Code of Civil Procedure, the plaintiffs cannot sue for them

in the present suit. On that footing, the amount due to the plaintiffs for excess royalty would be Rs. 2,598-10-9 instead of the amount found due by

the learned Subordinate Judge.

7. A further point was raised by the learned Vakil for the defendants in this cross-appeal and that is that, under the provisions of the second mining

lease, the two holdings under the two separate leases became amalgamated and the defendants are only liable to be charged for the excess royalty

when the excess is over the total quantity, namely, 2,35,960 maunds, which is the aggregate amount mentioned in the second lease. That seems to

me clearly not to be so. There is nothing in the second lease that purports to put an end to the provisions of the former lease. In fact, the former

lease has over and over again been recognised as valid and subsisting in the second lease. Clause 12 of the second lease that has been relied upon

clearly does not, in my opinion, put an end to the provisions contained in the first lease.

8. The result, therefore, is that in this case the deecee of the learned Judge of the Court below must be varied by declaring that the defendants are

liable to pay the sum of Rs. 2,598-10-9 as excess royalty in lieu of the sum found due by the learned Judge. The provision in the learned Judge''s

judgment as to the calculation of interest will, of course, remain unaflected by the present judgment. We make no order as to costs.

Teunon. J.

9. I agree.