

## PRIVY COUNCIL

A.H. Forbes

Vs.

Sir L.E. Ralli

P.C.A No. 5 of 1924

(Lords Shaw Carson, J. Sir John Edge and Mr. Ameer Ali JJ.)

03.04.1925

### JUDGMENT

#### **MR. AMEER ALI J.**

1. This appeal arises out of a suit brought by the plaintiff-appellant in the Court of the Munsif at Araria in the district of Purnea to evict the defendants from certain lands he had leased to them in the year 1894.
2. The suit was dismissed by the Munsif, as will be more particularly mentioned later in the course of this judgment. The Munsif's order was affirmed by the District Judge. The plaintiff preferred an appeal to the High Court, which was heard by a single Judge, Mr. Justice Ross, who reversed the judgment of the District Judge, and decreed the plaintiff's claim. On the defendants' appeal under the Letters Patent, a Division Bench, consisting of the Chief Justice and Mr. Justice Mullick reversed the decision of Mr. Justice Ross, and agreeing with the District Judge, dismissed the suit of the plaintiff. He now appeals to His Majesty in Council on the grounds that the High Court mis-construed the terms of the lease under which the defendants were let into possession, and have wrongly applied, under the circumstances of the case, the doctrine of estoppel in respect of his claim.
3. A brief narration of the facts which have led to this unfortunate litigation will explain the position of the parties.
4. Mr. Forbes, the plaintiff, owns considerable landed property in the district of Purnea. The defendants are Greek merchants trading largely in country produce in India under the name and designation of Ralli Brothers. On the 22nd June, 1894, the defendants' agent, one Acatos, obtained from the plaintiff a lease of four bighas of

land "for the purpose of erecting buildings, putting up presses, etc., for trading." The lease (Exhibit 5) is in English. Acatos executed a kabuliat which is identical in terms with the lease. As the question for determination turns, in a great measure, on the words of this lease, their Lordships think it desirable to give, so far as is necessary, the actual language of Exhibit 5. It is as follows:-

"That whereas land is required by Mr. C. Acatos, Agent of Messrs. Ralli Brothers, Merchants of Calcutta, for the purpose of erecting buildings, putting up presses, etc., for trading, I. A. T. Ricketts, Manager for A. H. Forbes, Executor to the Estate of the late A. H. Forbes, agrees to give a lease of four bighas of land to the aforesaid Mr. C. Acatos for the above purpose from year to year at an annual rental of Rs. 45 per bigha or total annual rent at Rs. 180."

5. Admittedly the defendants took possession of the leased lands for the purposes stated in Ex. 5. In 1903 a gentleman of the name of Carras took the place of Mr. Acatos as the local agent of Ralli Brothers at Purnea. So far as appears from the record, he resided at a place called Forbesganj, which had been established by the plaintiff or his father as the center of his estate. A railway station had been opened close by, and For besganj acquired a certain importance.

6. About this time circumstances appear to have arisen which necessitated the erection of a pucca or masonry building for the residence of Mr. Carras. As the lease, to use the language of the District Judge, was somewhat vaguely phrased, the defendants, Ralli Brothers, considered it expedient to obtain the plaintiff's express permission for the purpose of erecting the structure they proposed for their agent. At this time a Mr. Duff was acting as Mr. Forbes' manager or agent.

7. After going carefully through the evidence, their Lordships have no doubt that both the Munsif and the District Judge have correctly held that at the interview which took place in consequence of the defendant's applications for permission to raise the structure they proposed, and, at which the terms of the lease of 1894 were discussed. Mr. Forbes was personally present. In his evidence in the Munsif's Court the plaintiff states that he does not remember whether he was present or not. Mr. Carras positively swears that he was present and, in fact, took part in the discussion. Mr. Duff, for some reason or other, has not been examined on behalf of the plaintiff. If, as it is said, he was ill at the time and unable to attend, he could have been examined, as the lower Courts point out, on commission.

8. Their Lordships are thus left face to face with two statements, one by Mr. Forbes

saying that he does not remember, the other by Mr. Carras, who positively swears that Mr. Forbes was present.

9. In their Lordships' opinion, the Courts which were by law vested with the jurisdiction to deal with the facts have properly come to the conclusion that Carras statement should be accepted. The letter of the 31st December, 1903. (Exhibit A), which Duff wrote to Carras, is clear and precise on this point. Mr. Duff, writing as manager of the Sultanpur Estate, namely, the plaintiff's estate, says as follows :-

"My dear Carras,

"Referring to your conversation of this morning with Mr. Forbes and myself, I write (?) at your request to say that the lease executed by Mr. C. Acatos, dated the 22nd June, 1894, is a permanent lease and gives you the right to erect buildings, but it does not entitle you to hold at fixed rate, and the rent is liable to enhancement after proper legal notice. If your firm desires to have a permanent lease at a fixed rate of (torn) will be glad to see the proposed draft of lease and to show it to Mr. Forbes. In the meantime, you can commence the house if you like to do so."

With reference to this letter the plain tiff has raised a number of objections which appear to their Lordships to be feeble and untenable. In the first place, he says that it was a private letter. The District Judge held, as their Lordships think rightly, that it is an official letter written by Duff in his capacity as manager. It is precise in its language and tells the defendants that the lease of June, 1894, is "a permanent lease and gives you the right to erect buildings but it does not entitle you to hold at fixed rate and the rent is liable to enhancement."

10. The defendants appear to have paid a bonus or nazarana for the permission to raise the structure they proposed, and on the 10th January, 1904, a "parwangi" was issued from the plaintiff's zemindari cutchary in the Hindi language, the vernacular of the Province, giving the sanction for the erection of the building.

11. The parwangi, as it is called, requires some attention. Its translation is as follows :-

"To the Manager,

"Permission granted to Messrs. Ralli Brothers, Goledar of Gola at station Forbesganj, Pargana Sultanpur.

"Whereas you prayed through the agent of the said Gola for permission to erect a Pucca house in your Bandobasti (settled) Gola. As on enquiry and measurement you wish to erect a house on 2 C. 15 Dhurkis of land on payment

of Rs. 21 as Nazarana per mensem, and the said sum has under a Chalan been deposited through your agent in the estate. Therefore per mission is granted to you to erect a masonry house on 2 C. 15 Dhurkis of land in your Bandobasti (settled) Gola. A Nazarana (bonus) of rupees twenty per Cottah will be taken in case more land is occupied in constructing the Pucca house. All rights which you possess in your Bandobasti (settled) Gola land under the Patta and kabuliat will remain intact. No other right will be created under this permit. This Parwangi (sanction) or permission is intended for the said house only. Dated the 10th January, 1904, Sultanpur."

12. Considerable stress was laid by plaintiff's Counsel on the words which appear towards the end of this document - "No other right will be created under this permit"; and it was urged that the intention of the plaintiff was to restrict the rights of the lessee within the limits imposed by the original lease of 1894. Mr. Carras deposes that he does not know the Hindi language and did not, therefore, know of the terms of this document until some time after, and that he took it to be an acknowledgment of the bonus that he had paid. This statement has been accepted by both the Munsif and the District Judge. In their Lordships' opinion, in whatever way this document may be understood, it does not affect in any degree the effect of what took place at the interview with Mr. Forbes and Mr. Duff, the result of which is embodied in (Exhibit A) the letter of the 31st December, 1903.

13. Acting on the suggestion contained in the letter of Mr. Duff on the 31st December, 1903 (Exhibit A), viz., that if the defendants desired to have a permanent lease at a fixed rate (of rent), he would be glad to see a proposed draft of lease and to show it to Mr. Forbes, the defendants appear to have instructed their solicitors, Messrs. Sanderson and Co., to prepare the necessary draft.

14. From the document, to which reference will be made presently, it appears that Sandersons applied to Mr. Forbes for the production of a number of papers which they wished to inspect before preparing the draft.

15. The defendants have put in the reply of Mr. Duff to this application of Messrs. Sanderson and Co., but not the letter, Sanderson and Co., wrote to Mr. Forbes.

16. The plaintiff's advisers appear to have produced in the Munsif's Court a certain paper which, for purposes of identification, appears to have been marked "X." It was alleged that that was the communication in question, but they failed to prove the signature and naturally it was not admitted in evidence.

17. Another effort was made in the first Court to introduce the paper in question among the exhibits. They again failed to prove it. No question regarding the non-admission of this paper was raised before the District Judge or in the High Court. Although in the appeal to the High Court twenty-three grounds were taken, not one relates to it : nor is there any reference to this rejected letter in the grounds for leave to appeal to His Majesty's Council in the case lodged by the plaintiff before the Registrar,

18. Their Lordships are of opinion that there is no substance in the present contention relative to what is called "X."

19. Coming to the letter addressed by Duff to Messrs. Sanderson (Exhibit. A-1), it bears date the 23rd January, 1904, and is in these terms :-

"Sirs,

"With reference to your No. 392 of 13th instant to the address of Mr. A. H. Forbes, I am desired by him to inform you that matters of greater importance than the lease of a few bighas of land are constantly transacted in this estate, without the production of such papers as you wish to inspect. There are no special title-deeds for the plot of land which Messrs. Ralli Brothers have held for the last nine years, and if Mr. Forbes had no title, it follows that Messrs. Ralli Brothers have also had no title for the past. Mr. Forbes, therefore, declines to produce such valuable papers as he holds, and considers that the existing lease, with the addition of the sanction recently given to erect the building, is sufficient for all requirements."

20. This being the position of the parties, the point for determination resolves itself into a simple question of fact. There can be no question that upon the letter (Exhibit A) of the 31st December, 1903, the defendants commenced the building for the residence of their agent and completed it at considerable expense. Mr. Forbes knew of it and frequently visited the place. No question was raised until 1916. In that year the plaintiff's zamindari cutchary (estate office) was burnt down. He demanded contributions from his tenants to re-build the cutchary. They all agreed to pay except the defendants, who stood on their rights. It was then that the question of their eviction was first mooted. His evidence, long and involved as it seems to their Lordships, appears thoroughly consistent with the view taken by the District Judge.

21. Both the Munsif and the District Judge, in view of the purpose for which the lease was granted and the surrounding circumstances to which they refer in their judgments,

were of opinion that the demise in its inception was of a permanent character save and except as to the rate of rent : and that the words "from year to year" did not affect the permanent character of the lease, but only gave expression to the provision that the rent was variable from year to year upon proper notice. They also held that the plaintiff was estopped by his acts and representations from questioning the permanency of the tenure.

22. In the view their Lordships take of the case, they do not think it necessary to determine whether in its inception the lease created a permanent tenure, for they fully agree with the Courts in India that the plaintiff is estopped from interfering with the defendants' right to hold the land.

23. The doctrine of estoppel which the Courts in India, save and except Mr. Justice Ross, have applied to the claim of the plaintiff is embodied in Section 115 of the Indian Evidence Act of 1872. It is as follows :-

"When one person has by his declaration, act or omission intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed in any suit or proceeding between himself and such person or his representative to deny the truth of that thing."

24. The Munsif and District Judge have rightly held, in their Lordships' opinion, that the statement in Exhibit A is a statement of fact and not an expression of opinion, as is contended by the plaintiff. The plaintiff distinctly represented to the defendants' agent, Carras, that the lease granted in 1894 was a permanent lease, and that under it he was entitled to erect buildings, as the lease distinctly stated; but that there was no fixity of rent. It has been urged on behalf of the plaintiff that it was a yearly tenancy, and to hold that the plaintiff was estopped by his conduct as evinced by the letter of the 31st December, 1903, from enforcing eviction, would be tantamount to creating a new contract. It is said also that the contract of 1894 was a registered document, and no variation or alteration or change can be made in it except by a registered contract. The defendants did not contend that it was a new contract or ask for a new contract : nor have the Courts in India held that estoppel creates a new contract. Estoppel prevents the plaintiff from evicting from their holding the defendants, whom he, the plaintiff, induced by his representation and conduct to believe that they had a fixity of tenure, although not of rent, in the lands that had been leased to them. It gives effect to the representation that induced them to act as they did.

25. In the case of *Ramsden v. Dyson* the principle which governs this class of case is stated by Lord Kingsdown in the following terms :-

The rule of law applicable to the case appears to me to be this : If a man, under a verbal agreement with a landlord for a certain interest in land, or what amounts to the same thing, under an expectation, created or encouraged by the landlord, that he shall have a certain interest, takes possession of such land, with the consent of the landlord, and upon the faith of such promise or expectation, with the knowledge of land-lord, and without objection by him, lays out money upon the land, a Court of Equity will compel the landlord to give effect to such promise or expectation. This was the principle of the decision in *Gregory v. Highell*; and, as I conceive, is open to no doubt."

26. The principle has been accepted by this Board in the case of *Ahmad Yar Khan v. The Secretary of State for India*,

27. The exposition by Lord Shand in *Sarat Chunder Dey v. Gopal Ghitnder Laha* of the rule of equitable estoppel embodied in Section 115 of the Indian Evidence Act has been quoted in extenso in the judgment of the learned Chief Justice in the present case, and does not need repetition. Their Lordships desire to record their full concurrence with the principle there laid down.

28. They do not consider it necessary to refer to all the authorities that have been cited on both sides, as they think that the views expressed by Lord Kingsdown and Lord Shand completely answer the contentions of the appellant. Upon a review of the facts as well as of the authorities, their Lordships have come to the conclusion that the judgment of the High Court is right and that this appeal should be dismissed with costs, and their Lordships will humbly recommend, His Majesty accordingly.

Appeal dismissed.

Cases Referred.

(1901) 28 Cal 693 : 28 IA 211 : 3 Bom LR 505 : 5 CWN 634 : 8 Sar 39 (PC).

(1893) 20 Cal 296 : 19 IA 203 : 6 Sar 224 (PC)