

# CALCUTTA HIGH COURT

Inder Pershad Singh

Vs

Campbell

(Mitter, C.J. Maclean, J.)

23.03.1881

## JUDGMENT

### **Mitter, J.**

1. In 1874, the plaintiff, Inder Pershad Singh, engaged to sow 20 1/2 bighas of land with indigo yearly for nine years (1281-1289 F. S.) in consideration of a sum of Rs. 41 paid to him, at the rate of Rs. 2 per bigha, by Mr. W. Campbell of Karhar Factory. The land lies in two villages, viz., 161/2 bighas lie in the village of Ruttonpoora, the plaintiff being an under-tenant of this land; and 4 bighas in the village of Keratpur, the plaintiff being the proprietor of this land.

2. In 1284 F. S. (1876-77), the proprietor of Ruttonpoora ejected the superior tenant, under whom the plaintiff held the 161/2 bighas in that village; and the plaintiff's occupancy of that land ceased then.

3. The present suit is brought by the plaintiff to be relieved from the contract entered into in 1874 so far as the 161/2 bighas in Ruttonpoora is concerned. It appears from the judgment in this case, that the defendant, Mr. Campbell, brought a suit, No. 59 of 1878, against the plaintiff, to recover damages for non-fulfillment of the entire contract. The plaintiff thereupon brought this suit, No. 100 of 1878, as stated above, and another suit, No. 101 of 1878, for the price of indigo-plant supplied in 1282, 1283, 1284 (1874-1876), and the three suits were tried together in the Munsif's Court. The suit against the plaintiff was decreed in respect of the Keratpur lands, but dismissed as regards the Ruttonpoora lands. The plaintiff's suit No, 100 was decreed, and his contract cancelled in respect of the 161/2 bighas of land in Ruttonpoora. The plaintiff's suit No. 101 was dismissed.

4. On appeal to the Subordinate Judge, the plaintiff's suit No. 100 was dismissed on two grounds: (i) that the impossibility to perform the contract by reason of loss of the 161/2 bighas was caused by the plaintiff's neglect to preserve the lands, and therefore that Clause. 2, Section. 56, Act IX of 1872, did not apply, (ii) that the grounds upon which a contract can be rescinded as laid down in

Section. 35, Act I of 1877, are not applicable to this case.

5. The plaintiff has, therefore, brought this appeal to this Court. We are not definitely informed as to the subsequent history of cases Nos. 59 and 101, as being casus of a Small Cause Court class, they would not ordinarily come before this Court in Second Appeal.

6. The grounds of appeal are directed against the two propositions laid down by the Subordinate Judge.

7. The appellant relies on Section. 56, Act IX of 1872, and argues that his contract has become, since it was made, impossible. There can be no doubt that his contention is strictly true, and the second clause of the section plainly shows that the contract to the extent that it had become impossible had become void. The Subordinate Judge considers that the plaintiff, or promiser, could have prevented the impossibility; but on this point we are not in possession of full materials for an opinion. The mere fact that the plaintiff might have paid up the amount of the decree against the Bhatowlia Factory, and thus saved the factory and himself as its tenant from ejection, is not enough. We are informed it was a decree for rent and for ejection under Section. 52, Beng. Act VIII of 1869; but it may be that the decree was for a sum which the plaintiff could not reasonably be expected to pay, considering that he would have no security for his payment. The law which allows any one interested in protecting a tenure from sale to pay up a decree, gives him full security in the shape of a right to take possession of the tenure (Section. 62, Beng. Act VIII of 1869); but this is not the case under Section. 52 of the same Act. We cannot, therefore, say that the plaintiff lost his land from an omission made by his own neglect, and in our opinion the contract became void as to the 161/2 bighas when the proprietor of Ruttonpoora came into possession of the land.

8. We are of opinion that the Subordinate Judge was correct in holding that chap, iv of the Specific Relief Act does not apply. Strictly speaking, the plaintiff had no right to sue for rescission of the contract in part. We must refer back to the Contract Act itself to see under what circumstances a contract is voidable or terminable, and we think that none of the provisions for voiding or terminating a contract exist in this case. But we think that chap, v of the Specific Relief Act may be resorted to. We have shown that the contract was void in part; and Section. 35 allows a person against whom an instrument is void to sue to have it adjudged void. Section 40 provides for the partial cancellation of an instrument, which is evidence of different rights and obligations, and we think that the instrument in this case is evidence of an obligation to cultivate indigo in different villages, and that it is a proper case for the application of Section. 40. We shall, therefore, cancel it so far as it obliges the plaintiff to cultivate 161/2 out of 20 bighas with indigo, or to cultivate land in Ruttonpoora village.

9. It is only necessary to remark, that the defendant's contention that the plaintiff is bound to make good the full quantity of land from lands in his possession in villages other than

Ruttonpoora, is not borne out by the terms of the contract.

10. The instrument specifies the lands I(sic). each of the two villages of Ruttonpoora and Keratpur, which the plaintiff engaged to sow with indigo; but while it provided for the substitution of other lands for those contracted for in Keratpur, of which the plaintiff was a propitiator, it is silent as to the substitution of lands for those in Ruttonpoora, of which he was only a tenant.

11. We think it unnecessary to provide for compensation to the defendant beyond the restoration of the consideration of Rs. 33, or Rs. 2 per bigha for the lands in respect of which we cancel the contract, and this sum the plaintiff has offered to pay.

12. We reverse the decree of the Subordinate Judge, and restore that of the Munsif. The defendant will pay the plaintiff's costs in this Court and in the lower Appellate Court.