

NAGPUR HIGH COURT

Tekchand Kapurchand

Vs

Birzabai wife of Ramprasad Kayastha

(Niyogi, J.)

12.02.1942

JUDGMENT

Niyogi, J.

1. This is plaintiffs' appeal from the varying judgment of the District Judge, Chhindwara, in Civil Appeal No. 104 of 1932, delivered on 31st July 1936, This appeal involves the question of the interpretation and of a perpetual lease dated 19th December 1873 in respect of mouza Marjor. The aforesaid perpetual lease had been executed by Harkishgir, the proprietor, in favour of the defendant's ancestor by name Kalicharan who was his agent. On 10th March 1894 Karangir, the successor in interest to Harkishgir mortgaged the village to Seth Harabohand who filed civil Suit No. 6 of 1905 against Karangir's successors, Rudragir and Gyangir, to enforce that mortgage. Kalicharan, who was in actual possession of the village as a perpetual lessee, was impleaded in the suit at his own instance. That suit resulted in a decree for sale passed in favour of Harakchand subject to the rights acquired by Kalicharan as a perpetual lessee. The village was caused to be sold accordingly and came to be purchased by Kalicharan's son Ramjiwanlal on 9th November 1907. He was succeeded by Ramautar and after his death by his widow Rampyari. The plaintiffs in the present litigation brought the village to sale in execution of a decree obtained by them against Rampyari in civil Suit No. 34 of 1926 and themselves became the purchasers. At that time the village was actually in possession of Mt. Birjabai, the widow of Ramprasad who was the son of Kalicharan, the original perpetual lessee.

2. The plaintiffs instituted the suit out of which this appeal arises to recover arrears of theka jama (lease money) from the defendant for 4 years (1927-28, 1928-29, 1929-30 and 1930-31) amounting in all L 2101 besides interest. The particulars of their claim were as follows. The plaintiffs as Malguzars paid into the Government treasury L 325 the land revenue with the addition of L 20-4-0 on account of cesses, total L 345-4-0 in each of the four material years. The total of the 4 years' payments amounted to L 1381 under the perpetual lease dated 19-12-1873, the lessee was liable to pay L 250 per year out of which the lessor had to pay L 70 as land revenue as it had been then fixed. The land revenue was subsequently enhanced to L 325 besides

L 20-4-0 on account of cesses. The plaintiffs claimed from the defendant the undernoted sum of L 525-4-0 for each of the 4 years' period in suit:

₹ 345-4-0 current land revenue and cesses 70-0-0 land revenue payable at the time of _____ the perpetual lease in 1873 275-4-0 250-0-0 the amount of lease money fixed in the perpetual lease.	525-4-0.
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The total for the years amounted to L 2101-0-0 which together with interest brought the plaintiffs' claim to L 2449-3-0.

3. The defendant did not dispute that the land revenue had been enhanced from L 70 to L 325 and admitted her liability to pay the cesses amounting to L 20-4-0. She however contested the plaintiffs' right to recover anything more than L 250 the amount of lease money fixed in the perpetual lease and pleaded further that the plaintiffs were estopped by judgments in civil Suits Nos. 34 of 1926, 6 of 1905, 721 of 1903, 461 of 1905, 130 of 1907 and 983 of 1907. The trial Court held that on the true construction of the perpetual lease of 1873, the plaintiffs were not entitled to claim anything more than L 250 per annum but that in equity they were entitled to recover the lease money fixed in the perpetual lease (i.e. 250) together with the difference between the original amount of land revenue and the enhanced amount of land revenue (i.e. $325-250=75$). The two sums (viz. 250,75) added together equal the amount of the enhanced land revenue, i.e., L 325. It however held that the plaintiffs' suit was barred by the judgments in Civil Suits Nos. 461 of 1905, 130 of 1907 and 623 of 1907 from claiming more than the amount of lease money fixed in 1873. It therefore passed a decree for L 250+20-4-0 (cesses) for each of the four years together with interest at 1 per cent, per mensem, total L 1279-2-0.

4. On appeal by the plaintiffs, the lower appellate Court referred the case to the Deputy Commissioner, Chhindwara, for enquiry under Section 75 read with Section 106(e), Central Provinces Land Revenue Act. The Commissioner, Nagpur Division, in his appellate jurisdiction, directed that the land revenue (L 325) should be paid by the plaintiffs and that the defendant should pay L 325 instead of L 250. The lower appellate Court passed a decree in pursuance of this order enhancing the amount payable by the defendant. Against this decree the plaintiffs have preferred this appeal and the defendant has filed a cross-objection. Pending this appeal the Revenue Tribunal reversed the Commissioner's order holding that Section 75, Central Provinces Land Revenue Act, was not applicable to the facts of the case and declined to accept the reference made by the District Judge. Consequently this appeal has been argued on its merits.

5. The first point to be considered is that of res judicata. The trial Court held that the decisions in Civil Suit No. 461 of 1905 (Ex. D-5), Civil Suit No. 130 of 1907 (Ex. D-7) and Civil Suit No. 623 of 1907 (Ex. D-9) operated as res judicata to debar the plaintiffs from Claiming in excess of

the original lease money amounting to L 250. It is urged for the respondent that the abovementioned judgments and the one passed in Civil Suit No. 983 of 1907 (Ex. D-10) operate as res judicata against the appellants. The decision which is important is that given in Civil Suit No. 461 of 1905. It was on the strength of that decision (operating as res judicata) that the Civil Suit No. 130 of 1907 was decided and in view of that decision the predecessors in title of the plaintiffs in the present case who were defendants in Civil Suit No. 623 of 1907 (Ex. D-9) and Civil Suit No. 983 Of 1907 (Ex. D-10) remained absent and suffered decrees to be passed against them ex parte.

6. In Civil Suit No. 461 of 1905 which was on the file of the Munsiff who had jurisdiction to try suits of value up to L 500, Kalicharan (the lessee and defendant's predecessor) laid a claim against the successors of Harkishgir (the lessor) named Budragir and Gyangir for L 70-3-0 on the allegation that he had been compelled to pay L 264-12-0 as land revenue while he was only liable to pay L 207-4-0, i.e., L 57-8-0 in excess of what he was legitimately liable to pay. Adding interest rupees 12-11-0 to L 57-8-0 his claim came to L 70-3-0. The Munsiff held that, as Malguzars and proprietors, Rudragir and Gyangir were liable to pay the land revenue assessed on the village, the lessee Kalicharan could not be compelled to pay anything more than L 250 (the amount of lease money fixed in the perpetual lease deed of 1873). Kalicharan's suit was decreed against Rudragir and Gyangir. The question is whether this judgment operates as res judicata to preclude the appellants (plaintiffs) in this case from claiming any amount in excess of L 250 as they do. That raises the question whether the Court of the Munsiff which decided Civil Suit No. 461 of 1905 was competent to try the suit out of which this appeal arises. Now, in this case, the plaintiffs' total claim is for L 2101, which is made up of the annual claim for Rupees 525-4-0 for four years. This amount of L 525-4-0 is made up as follows:

₹ 325-0-0	land revenue 20-4-0 cesses _____
345-4-0 70- 0-0	land revenue payable in 1873 _____
275-4-0 250-0-0	lease money fixed in 1873 _____
525-4-0.	

7. The land revenue which was payable by the Malguzar in 1905 was L 270 and not L 325 as it is since the settlement of 1916. Consequently, if this suit had been brought in 1905, the claim would have been as follows: L 270-0-0 land revenue in 1905 20-4-0 cesses (as the exact amount of cesses in 1905 is not known the existing amount of cesses is taken into account) _____ 292-4-0 70-0-0 land revenue payable in 1873 _____ 222-4-0 250-0-0 lease money fixed in 1873 _____ 472-4-0.

8. The claim would thus have been less than L 500 and consequently would be triable by the

Munsif who decided Civil Suit No. 461 of 1905. The trial Court on the authority in *Sukhdeo v. Bhulai*¹ held that the proper criterion for the application of the rule of res judicata would be the amount claimed for one year alone out of the four years to which the present suit relates. In other words the present suit has been split up into four separate suits to determine whether or not the Court which tried the

¹ A.I.R. 1919 Nag. 25

previous suit was competent to try this suit. On behalf of the appellants it is contended that the rule enunciated in *Sukhdeo v. Bhulai A.I.R. 1919 Nag. 25(SUPRA)* cannot apply in the present case for the reason that under Order 2, Rule 2, Civil Procedure Code, the plaintiffs were bound to sue to recover the arrears of all the four years. This contention at first sight appears cogent but in reality is not sound. If this argument is accepted it would enable a claimant to evade the rule of res judicata by merely waiting for some years in order to let his claim swell to an amount exceeding the pecuniary jurisdiction of the Court which decided the suit against him. It is true that in the present case in view of the explanation appended to Rule 2 of Order 2, Civil Procedure Code, the successive claims (in respect of rent) arising out of the same obligation are deemed to constitute one cause of action, but it cannot be said that a composite cause of action relating to arrears of more than one year is a different one from that relating to one year. It is supposed that it is left to the discretion of a litigant to enlarge or magnify his cause of action to circumvent the rule of res judicata; I see no reason why it would not be open to his adversary to insist on breaking up that enlarged cause of action for the purpose of preventing evasion of the law. In *Sekendar Ali v. Sadaruddin Bhuniya*², it was pointed out that if it is possible to treat the entire cause of action upon which the latter suit is founded as divisible and if in the earlier suit one of the component parts of the cause of action was relied on, then the previous decision will stand as a bar to the extent of the matter involved in the previous suit. If the previous decision bars a suit to recover arrears of one year, it must logically bar a suit in respect of any other year. The case referred to above was applied in *Mt. Sitabai v. Hari*³

9. It is contended that the capacity in which plaintiffs have instituted the present suit is different from that in the previous suit. The capacity is said to be different because the defendant (lessee) was appointed lambardar subsequent to the decisions in previous suits. It is argued that this is a suit between Saddar lambardar and lambardar. It is true that as lambardar the defendant is under an obligation to pay land revenue to the Government but it must not be overlooked that the land revenue is payable "through him" (Section 188(1)(b), C.P. Land Revenue Act, 1917). As a lessee in actual possession and enjoyment of the village he was liable to pay land revenue even before he became the lambardar and it was because the Government recovered land revenue from him that in the past he had to file several suits. The mere fact that the lessor and lessee have acquired the additional capacity of Saddar Lambardar and lambardar would not alter the nature of the suit and bar the application of the rule of res judicata. *Mt. Sitabai v. Hari A.I.R. 1938 Nag. 401(SUPRA)* cited above negatives this contention.

10. My attention is invited to *Shibu Raut v. Baban Raut*⁴ *Vyankat Awachit v. Onkar Nath*⁵ and

Gokul Mander v. Pudmanund Singh (02) 29 Cal. 707 and it is urged that the Court trying the previous suit must be competent to try the subsequent suit as laid. Nothing said in these cases contravenes the principle laid down in *Gopi Nath Chobey v. Bhugawat Pershad*⁶ which was followed by the trial Court in the case. In this case Mitter, J. construed the expression "in a Court of jurisdiction competent to try such subsequent suit" referring to the jurisdiction of the Court at the time when the first

² AIR 1935 Cal 792 : 159 Ind. Cas. 1008

⁴(08) 35 Cal. 353

⁶(84) 10 Cal. 697

³ A.I.R. 1938 Nag. 401

⁵ A.I.R. 1921 Bom. 434

suit was brought. This interpretation received the approval Of the Judicial Committee in *Raghunath Panjah v. Issur Chunder Chowdhry*⁷ their Lordships expressed their concurrence and said:

There is no doubt that the Court in which this suit is brought, and that in which the former suit was brought, are Courts of different jurisdiction; but at the same time the Court in which the former suit was brought was the only Court at that time competent to try suits of that kind, and if this very suit had been brought at that time, the Deputy Collector's Court would have been the only Court competent to try it.

11. If the present suit had been brought in 1907 to recover arrears of one year, the claim would have been L 472-4-0 as shown above and the suit could not have been tried in any other Court but that which tried it. The next question is whether the plaintiffs are legally entitled to recover from the defendant any sum exceeding L 250 which was fixed in the original theka deed (Ex. P-1) dated 16th December 1873 the material terms of which are as follows:

My heirs and successors to the gaddi or myself will cause no prevention or obstruction to the said Lala in the matter of the theka of the said mouza; and Kalicharan (lessee) and his heirs and family shall continue to pay L 250. exclusive of patwari's dues etc, in due kists each year.

12. The terms of the lease leave no room for doubt that it was a permanent lease under which the original Thekedar (Kalicharan) and his heirs were liable to pay only Bs. 250 exclusive of cesses. The lease deed does not, reserve for the lessor the right to enhance the lease money in any circumstances even though both parties must have fully expected that the revenue then assessed on the village was liable to enhancement, inasmuch the currency of the first settlement in 1864 was to ensure for 30 years and not permanently. In these circumstances, the question is whether the lessor can compel the lessee to pay a sum equal to the enhanced land revenue in addition to the lease money fixed by the contract. In my opinion the lessees cannot, in the face of the contract, claim anything more than L 250-0-0; nor is it open to the Court to ignore the contract and give relief to the plaintiffs on equitable considerations. A claim similar to the one made by the plaintiffs in the present case was rejected in *Babshetti v. Venkataramana*⁸ *Ranga v. Suba Hedge*⁹ *Secretary of State v. Fernandes*¹⁰ and *Vidyapurna Thirthaswami v. Uggannu* (11) 34 *Mad. 231(SUPRA)* in the first mentioned case West, J. was clearly of opinion that even if the

parties acted on the assumption that the assessment would never be increased, that would not prevent the parties to unite their wills to form a contract in spite of any future change in the circumstances. The principle enunciated in this case viz. that a contract binds the parties to it and their representatives irrespective of any change in the circumstances was accepted as sound in the subsequent decisions referred to above. In *Vidyapurna Thirthaswami v. Uggannu*¹¹ Wallis J. declared his opinion that it would be equitable if the increased assessment were apportioned between the parties and expressed his wish that the Legislature should redress the injustice but declined to

⁷(85) 11 Cal. 153

⁹(80) 4 Bom. 473

¹¹(11) 34 Mad. 231

⁸(78) 3 Bom. 154

¹⁰(07) 30 Mad. 375

interfere. In *Ladhuram v. Sale Mahomed*¹², the learned Judges who decided the case made the tenant bear the burden of the assessment in excess of the rent he was liable to pay under his contract, on the view that so long as the assessment does not exceed the annual lease money payable by the lessee, the lessor must bear the increased assessment. It is difficult to understand the principle of equity involved in the case. Even if equity is taken in its non-technical sense as meaning broadly fairplay and justice, it would be manifestly unfair to make the landlord pay to Government the whole of the lease money he receives from his lessee; for in that case he would be deprived of all his profits from the land. The main question is whether, assuming that the contract between the parties begins to operate unfairly, it is open to the Court to interfere with the contract.

13. The Court's power to interfere with contracts is limited to such cases as fraud, undue influence or mistake and relief against penalty or forfeiture. With due deference to the learned Judges who decided the last mentioned (unreported) case I do not understand how the Court will have jurisdiction to interfere with a valid contract which was perfectly fair when it was made. It may indeed appear to operate severely against one party under altered conditions but these conditions were not unknown to the parties. The lessee, Kalicharan, Was the Mukhtyar of the lessor, Harkiahgir, and the lessor might well have been unduly generous to him on account of his meritorious services. The circumstances which are relevant for determining the fairness or unfairness of a contract are those which existed at the time the contract was made. No such circumstances are proved in the present case. In this connexion the analysis of the situation made by the learned Commissioner (Mr. Stent) in his order dated 8th July 1936 is illuminating. It may best be expressed in his own words:

The village originally had a land revenue of L 70 only. As this must have represented not less than 50 per cent, of the assets, the net profit to the malguzar at that time could not have been more than L 70 per annum. It was presumably only possible for the original malguzar to lease the village for L 250 per annum, because larger profits could, it was thought, be made out of it. The original lessor drew a net profit of Bs. 180 per annum for 25 years. He thus received a sum of Bs. 4500 in all before the land revenue was revised. This sum must be far in excess of the value of the village at the time of the lease. It could not have been much more than 30 times the land revenue or L 2100,

14. It will thus appear that while the village was worth L 2100 in 1873, the lessor recovered L 4500 from the land up to 1897-98 when the land revenue was increased at the settlement to L 270. Even that enhanced land revenue was paid ungrudgingly by the lessor for some years after that settlement. These facts coupled with the important fact that the plaintiffs purchased the village in execution proceedings with their eyes open preclude any equitable considerations arising in their favour. The result is that the appeal fails and the cross-objection succeeds. The lower appellate Court's decree is set aside and the trial Court's decree is restored. The plaintiffs will pay the defendant's costs in all the Courts including the costs of cross-objection.

Appeal dismissed.

¹² AIR 1925 Bom 168