Privy Council Appeal No. 62 of 1913.

Raja Ramkanai Singh Deb Darpashaha and another - - - - - - *Appellants,*

v.

Mathewson and others - - - - *Respondents.*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 9TH FEBRUARY 1915.

Present at the Hearing:

LORD SHAW. SIR JOHN EDGE.
SIR GEORGE FARWELL. MR. AMEER ALI.

[*Delivered by* LORD SHAW.]

This is an appeal from a judgment and decree of the High Court of Bengal, dated the 28th April 1910, affirming a judgment and decree of the Subordinate Judge of Manbhum, dated the 25th November 1907, dismissing the suit with costs. The main object of the suit was to obtain a declaration of the nullity of a putni lease dated the 29th June 1890. The other demands in the plaint were consequential upon such a declaration of nullity being obtained. The only question argued in the appeal was whether the putni lease was *ultra vires* and invalid.

The facts are briefly these. The first appellant, the plaintiff, is the son and successor of the late Raja Broja Kishore Singh Deb Darpashaha, the owner of the Barabhum estate. In 1883 the Raja borrowed Rs. 60,000 from

Messrs. Robert Watson and Company on a mortgage of his estate, and on 27th February of that year he executed an Ijara lease in their favour. This lease contained a condition that if the Company should desire to take a putni lease of such portions of 84¼ villages as were treated in the Ijara as ghatwali lands the Raja would grant such a putni on certain terms. On 8th March 1885 this putni was granted. Four years thereafter, viz., on 6th March 1889, the affairs of the Raja being deeply embarrassed his estate was placed under the protection of Government by virtue of the Chota Nagpur Encumbered Estates Act, 1876.

There were apparently considerable difficulties in arranging for the liquidation of the debts. After negotiations it was agreed that the remaining portions excluded from Messrs. Watson and Company's former putni lease should be demised to these creditors for a sum of Rs. 30,000. Their Lordships have considered the documents and have no hesitation whatsoever in accepting the view that the true, and, in fact, only meaning of the transaction was that expressed in the Commissioner of Chota Nagpur's letter of the 20th February 1890, in which he sanctioned "the proposal to grant them a putni "lease of the 84¼ villages excluded from the "present putni."

The elements of the transaction being thus settled and the amount of the premium arranged, what remained to be done was to have the actual deed drawn up and executed. This was done. It has been argued before the Board that the putni lease which was sanctioned was to be a lease containing the terms of the Ijara lease. The Board cannot assent. These two contracts are essentially different in character, the latter being of a temporary character, containing provisions and reservations suitable to a lease for a short

duration. Their Lordships have no hesitation in accepting the judgment of the High Court which is thus expressed on this point :—

"The fact that the Raja had granted a previous putni "lease was known to the Commissioner, and was, in fact, "referred to in his sanction. * * * It is * * * "reasonable to assume that the Commissioner understood its "character when he was asked to sanction a similar putni. "It would have been inconvenient that the subsequent "putni should be on any different terms from the first, "because, as pointed out in the course of the correspondence, "the proposed new putni was in respect of villages which "were scattered about in the area covered by the earlier "putni, and the object of the second putni was to round up "the Estate. I do not think, therefore, that this ground "has been made out."

Apart from the point just dealt with, the putni lease actually granted is now challenged. The grounds of challenge may be compendiously and conveniently stated as follows :—

(1.) It is said that the sanction was, upon a sound construction of the letter of 20th February 1890, merely a sanction of a proposal to grant a putni. Their Lordships think the objection to be trivial. This proposal had been made, it had been accepted, a contract was accordingly completed on the subject, and it was that contract so completed that was sanctioned.

(2.) It was said that the sanction contained the clause "provided that the amount be paid "before the end of March 1890.". In the course of carrying out the bargain some delay, not very great, occurred. There was an exchange of views as to the actual wording of the draft putni, but the document was finally settled by both parties, and on the 25th June 1890 Messrs. Watson and Company paid the salami of Rs. 30,000 to the official manager of the estate, viz., the Deputy Commissioner. This being done, it does not appear to their Lordships that it would have been open thereafter for a challenge to be made,

even by the Deputy Commissioner himself, or for the Commissioner's sanction to have been withdrawn. *A fortiori* there appears no ground for sustaining such a challenge when put forward after a considerable lapse of years on behalf of the successor of the debtor.

(3.) The last objection is of a twofold character. It is urged that the sanction of the Commissioner, being a statutory requisite in virtue of the Chota Nagpur Encumbered Estates Act of 1876, of the rules thereunder, and of the Act of the Governor-General, No. V. of 1884, such sanction was not given to the final and actual putni lease itself. This depends upon a construction, especially, of Rule 16, which is in the following terms :—

"The power to lease under section 17 of the Act shall be "subject to the following provision :—No lease shall be given "for any term exceeding three years without the sanction of "the Deputy Commissioner, or exceeding four years without "the sanction of the Commissioner."

Upon this point their Lordships are of opinion that when it is affirmatively established that a transaction itself in all its essential particulars has obtained the sanction of the Commissioner, and when it is requisite that the transaction be carried into effect by the preparation of the appropriate deeds, a challenge merely on the ground that the document ultimately prepared had not been submitted for sanction cannot be sustained. In administrative and departmental action it must necessarily be the case that formal details may have to be entered upon in order to carry into practical effect, and put into legal shape, the arrangement to which sanction was adhibited. The first head of this objection accordingly fails. And it was further urged that in any view the transaction which was sanctioned was a transaction of a grant of a putni lease to Robert Watson and Company, in other words to a firm of individual

men and not to Robert Watson and Company, Limited, *i.e.*, a different and incorporated *persona*. This demands careful consideration. There is this to be said for the objection, that the *persona* in the latter case is different from the *persona* in the former, and that a change in the lessee or putnidar ought to be treated as a change in essentials. It may be added that a putni lease of land, an agreement of an important and wide-reaching character might demand separate consideration, and point to a different conclusion when this essential was altered. Questions might arise, and difficulties suggest themselves with regard to a limited company against whom legal remedies at law might not be the same as in the case of individuals, and public and administrative considerations might come into play operative either in the way of restriction or refusal on account of a change in *persona* in the lessee. In the opinion of their Lordships, it is not necessary to pronounce any judgment upon this point in the present case. For their Lordships are of opinion that when the negotiators in the course of correspondence mentioned in their letters Robert Watson and Company, they did in fact mean and were perfectly understood to mean Robert Watson and Company, Limited, the fact of the incorporation of the limited concern being well-known; and, indeed, one of the principal documents of the case is the petition dated 14th May 1889, being the petition of Messrs. Robert Watson and Company, Limited, filing the account of the money due to them. It may be true that the limited concern is a different one from the previous and unincorporated firm, but in the language of the judgment of the High Court:—

"The misdescription does not, under the ordinary "principle applicable to such matters, affect the validity

"of the sanction or the lease. Though there was such a "misdescription, it is perfectly clear what was intended by "the sanction, and that it was intended that the lease "should be given and taken by the persons who are properly "described as Messrs. Robert Watson & Co., Limited."

A point was taken to the effect that the putni transaction could not be held to have been ratified, seeing that it had not specifically taken into account the existence of khoorpoosh, or maintenance rights, over the property sold. These could in no view have been affected for the simple reason that the interests of third parties properly secured over the properties, were in no respect prejudiced. And as to the further point that in the event of the discontinuance of these rights a certain reversion would follow to the zemindar, their Lordships are of opinion that this reversionary right not being in fact embraced within the grant, no prejudice to any such right has occurred. The point accordingly fails.

Their Lordships are of opinion that the judgments of the Courts below are correct, and they will humbly advise His Majesty that the appeal be dismissed with costs.

In the Privy Council.

RAJA RAMKANAI SINGH DEB DARPASHAHA AND ANOTHER

v.

MATHEWSON AND OTHERS.

DELIVERED BY LORD SHAW.

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