

*Privy Council Appeal No. 155 of 1927.*  
*Bengal Appeal No. 58 of 1925.*

Purna Chandra Sett and others - - - - - *Appellants*

*v.*

The Kamarhati Company, Limited - - - - - *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 JULY, 1929.

---

*Present at the Hearing :*

LORD CARSON.  
LORD DARLING.  
SIR LANCELOT SANDERSON.  
SIR GEORGE LOWNDES.  
SIR BINOD MITTER.

[*Delivered by* SIR LANCELOT SANDERSON.]

---

This is an appeal from a decree of the High Court of Judicature at Fort William in Bengal, dated the 28th May, 1925, which affirmed a decree of the Additional District Judge, 24 Perganas, dated the 18th December, 1922, which last-mentioned decree reversed a decree of the Subordinate Judge at Alipore, dated the 19th July, 1918.

The suit was instituted on the 2nd June, 1916, and the subject matter thereof is a small strip of land at Kamarhati, measuring about 439 feet in length and about 10 feet 6 inches in width.

The value of the subject matter of the suit was laid at Rs. 2,050 in the Court of first instance, but in the year 1926 the learned Judges of the High Court, who heard the application for leave to appeal to His Majesty in Council, after an enquiry and

report as to value by the Subordinate Judge, were of opinion that the case came within paragraph 2 of Section 110 of the Civil Procedure Code and that it involved a substantial question of law. They therefore granted a certificate that the case fulfilled the requirements of the above-mentioned section.

The appellants are Purna Chandra, one of the plaintiffs, and the representatives of the two other plaintiffs, who have died since the institution of the suit.

The plaintiffs alleged that they were the owners of the said strip of land ; that the defendants were the owners of a jute mill situate on lands leased to them by the predecessors in title of the plaintiffs by a lease dated the 4th of October, 1877 ; that their predecessors in title and after them the plaintiffs, had been in possession of the land in dispute until about six months before the suit, when they were wrongfully dispossessed by the defendants, and they prayed for a decree for recovery of possession.

The defendants relied upon the said lease of the 4th of October, 1877, and claimed that the said strip of land was included in the lease, and that they were rightfully in possession thereof.

The learned Subordinate Judge, who tried the suit, held that there had been certain huts on the disputed land, that the huts belonged to the plaintiffs, and although the huts had ceased to exist some six or seven years before the trial of the suit, plaintiff's possession must be presumed to have continued until 1916, when the plaintiffs were dispossessed by the defendants. He held further that the land in dispute was outside the lease, and accordingly he made a decree that the plaintiffs' proprietary right to the land should be declared and that they should recover possession.

The defendants appealed to the District Judge, who held that the land in dispute was included in the lease of the 4th of October, 1877. The learned Judge therefore allowed the appeal and dismissed the suit.

The plaintiffs appealed to the High Court. The appeal was heard in March, 1921, and the learned Judges held that the terms of the lease were not free from ambiguity and they remanded the case to the lower appellate Court in order that evidence of user should be considered as throwing light upon the question of the construction of the lease.

Accordingly the appeal was re-heard in September, 1922, in the lower appellate Court, but not by the District Judge who had previously decided the appeal.

On the further hearing the learned Additional District Judge, on the construction of the lease and the map attached thereto, decided that the learned Subordinate Judge was in error in holding that the disputed land was excluded from the lease and that the plaintiffs were entitled to have their proprietary right declared and to recover possession.

He held that the above-mentioned decision was sufficient to dispose of the appeal, but, in view of the direction of the High Court, he proceeded to consider the question of user. After referring to the various matters relied on by the parties respectively, he expressed the opinion that the evidence on both sides was equally unconvincing and that he could not say that it threw any light upon the question of the construction of the lease.

In the result the learned Additional District Judge allowed the appeal, set aside the decree of the trial Court, and dismissed the suit.

The plaintiffs again appealed to the High Court. The appeal was heard in May, 1925.

The learned Judges held that they could not interfere in second appeal with the conclusions of the learned Additional District Judge upon the evidence as to possession which was before him.

On the construction of the lease they held that the land in dispute was included in the lease. They therefore dismissed the appeal.

It is from this decree of the High Court that the plaintiffs have appealed to His Majesty in Council.

Before dealing with the merits of the appeal, their Lordships feel compelled to draw attention to the inordinate length of time occupied by the proceedings in this case. The question was really a simple one and the value of the property in dispute was small; yet the litigation, which included two hearings in the lower appellate Court and two hearings in the High Court, has continued from 1916 until 1929.

Their Lordships trust that such delay is exceptional, for it must be obvious that the protraction of proceedings in such a case as the present one over a period of thirteen years is calculated gravely to interfere with the due administration of justice.

In their Lordships' opinion, the finding of the lower appellate Court as to user of the land in dispute must be accepted. The decision was that the evidence on both sides was unconvincing and that it threw no light upon the construction of the lease.

This involves a finding that the plaintiffs did not prove to the satisfaction of the lower appellate Court that they had been in possession of the said land until about six months before the suit, as alleged by them.

The solution, therefore, of the question before their Lordships rests upon the construction of the terms of the lease and the map which was attached thereto.

The lease of the 4th of October, 1877, was made between the predecessors in title of the plaintiffs and the defendants, and the material terms are as follows :—

“Whereas the Assignors are the sole absolute owners or proprietors in Mourashi Mokarari and perpetual lease tenure of the messuages and buildings and pieces or parcels of land hereinafter particularly described and the

Pattas of portions whereof are described in the Schedule hereto and which said lands are delineated in the map or plan thereof hereunto annexed being (save as hereinafter excepted) the premises expressed to be hereby assured in possession and free from incumbrances And Whereas the Assignors have contracted and agreed with the Company for the absolute assignment to them of the said messuages hereditaments and premises (except as hereinafter mentioned) and of all rights and interests therein in consideration of the rent hereinafter reserved and upon and subject to the several conditions and provisions hereinafter contained Now this Indenture witnesseth that in pursuance of the said agreement and in consideration of the rent hereinafter reserved and of the covenants on the part of the Company hereinafter contained the assignors do and each of them doth hereby assign and transfer unto the Company their successors and Assigns All and Singular the several messuages lands and hereditaments delineated in the map or plan hereunto annexed and situate at Kamarhati in the Registration District of the 24-Parganas Sub-District Cossipore, Thana Ariyadaha, containing a total area as shown in the said map of one hundred and thirty-one bighas thirteen cottas and six chittacks and bounded on the north, south and east by the drain and on the west by the River Hooghly and the Pattas for a portion of which said hereditaments expressed to be hereby assured are described in the Schedule hereunder written And all the Mourasi Durmourasi Mocarari and Darmocarari perpetual leases and all other the right of the Assignors or any of them therein or thereto Together with all houses out-houses godowns stables and sheds erections and buildings hedges ditches fences ways water watercourses liberties privileges easements advantages and appurtenances whatsoever to the said herditaments and premises appertaining or with the same or any part thereof now or heretofore demised occupied or enjoyed or reputed or known as part thereof or appurtenant thereto . . . . But save nevertheless and except out of this present assurance the piece or parcel of land containing an area of two bighas three cottas and four chittaks and in the said plan hereunto annexed delineated and therein coloured blue together with the messuage and stable belonging to the same with free liberty for the assignors their heirs executors Administrators representatives and Assigns and for their carriages and animals of passage freely by a road of twelve feet in breadth or the same breadth as the present road over such part of the hereditaments and premises expressed to be hereby assured as the company their successors and assigns may from time to time point out to and from another messuage and hereditaments situate to the south of the premises hereby assured at present occupied by the Assignors and which are not included or shown in the said plan hereunto annexed."

The original of the map or plan annexed to the lease was not produced before the Board. It was, however, agreed by the learned Counsel for the respective parties that the copy of the plan, which was produced, correctly represented the original plan in all respects.

The plan is headed "Plan of lands and buildings prepared by Dina Nath Guin, overseer, dated the 3rd September, 1877. This date, it will be noted, was about a month before the execution of the lease.

There is a note on the plan above the name of D. N. Guin and the date 3.9.77, which is as follows :—

Total area :

131 bighas 13 kattas 6 chuttacks.

Area of Green Garden :

2 bighas 3 kattas 4 chuttacks.

It would therefore appear that, so far as the plan is concerned, the total area of the premises delineated on the plan measured 131 *bighas* 13 *kattas* 6 *chuttacks*, and that part of the total area, viz., the "Green Garden," measured 2 *bighas* 3 *kattas* 4 *chuttacks*.

The above-mentioned two measurements on the plan, viz., of the total area and of the Green Garden, correspond with the measurements given in the lease, and there is no doubt that the piece of land which is called the "Green Garden," and which is coloured blue on the plan, is the piece or parcel of land which, to use the words of the lease, is excepted "out of this present assurance."

The remainder of the land delineated on the copy plan, which is before their Lordships, is coloured green. It includes the strip of land which is in dispute.

So far, therefore, it would appear that the strip of land in dispute was part of the land leased to the defendant Company.

The difficulty is caused by the description of the boundaries. They are, as already mentioned, "on the north, south and east by the drain, and on the west by the river Hooghly."

The river Hooghly is shown on the west of the area delineated on the plan.

There is shown on the plan a drain which begins with a junction of the Hooghly on the north; it is drawn as passing eastwards, then in a southerly direction, then in a westerly direction, again in a southerly direction, and then westwards until it joins the river Hooghly.

In their Lordships' opinion, there is no doubt that this is "the drain" which is referred to in the lease.

The disputed strip of land lies to the south of this drain, and, strictly speaking, it is not within the boundary constituted by "the drain."

The learned Judges of the High Court were inclined to hold that the drain referred to as the southern boundary must be the drain to the south of the land leased and north of the land depicted blue in the plan. This, according to the lower appellate Court, was a narrow drain, now filled up, separating the road from the garden. Their Lordships are not prepared to adopt that view, inasmuch as, in their opinion, it is not consistent with the terms of the lease and the delineation of "the drain" on the plan.

The question remains whether, on the true construction of the terms of the lease and the plan, which it is admitted must be treated as part of the document, the disputed strip of land was leased to the defendants or not.

Having regard to the terms of the recitals, the operative part of the lease, the exception "out of this present assurance" of the part coloured blue, the delineation of the total area on the plan and the area excepted therefrom, their Lordships are of opinion that the disputed strip of land was included in the area leased to the defendants.

Their Lordships were informed that no evidence was given to show that if the disputed strip of land were included, the area would be more than 131 *bighas* 13 *kattas* and 6 *chuttacks*, the measurement given on the plan for the total area, including the part coloured blue, which was expressly excepted. That being so, the description in the lease which is based on the plan goes to show that the disputed strip of land was included in the lease.

It is not immaterial to mention that if it had been intended to exclude the disputed strip of land as well as the "Green Garden," the disputed strip of land would have been delineated in the same colour on the plan as the "Green Garden," viz., blue.

It is not coloured blue. On the contrary, it is coloured green in the same way as the other land demised.

The description of "the drain" being the boundary on the south would have caused more difficulty in construing the lease but for the fact that the piece of land coloured blue was excepted "out of this present assurance": if it had been intended that "the drain" described in the lease as the boundary should be the decisive factor in determining the limit of the land leased by the deed on the south side, there would have been no necessity to except the piece of land called the "Green Garden"—that is, the piece of land coloured blue.

It is obvious that the last-mentioned piece of land is not within the boundary of "the drain," and if it had been intended that the area of the land leased should be determined by the boundary of the drain, there would have been no necessity to mention the piece of land coloured blue at all.

There is a portion of a road running east and west, which, according to the plan, lies to the north of the piece of land coloured blue, and to the south of the disputed strip of land.

The learned Judges of the High Court referred to a statement made by Nalini Nath Set, who was an attorney by profession and one of the plaintiffs in the suit, in the course of his evidence with regard to the above-mentioned road.

He stated that "the road is within the lease of Kamarhati Jute Company, but we have a right of way over the same."

If that be correct, and the road, which is to the south of the disputed strip of land, and which is obviously not within the boundary of the drain, is within the lease, it is difficult to believe that the disputed strip of land which lies between the road and the drain was not also included in the lease.

Their Lordships think that too much importance should not be attached to that admission. It is, however, material to observe that it is in accordance with the conclusion at which their Lordships have arrived as to the construction of the terms of the lease and the plan attached thereto.

For the above-mentioned reasons their Lordships are of opinion that the appeal should be dismissed with costs, and they will humbly advise His Majesty accordingly.



In the Privy Council.

---

PURNA CHANDRA SETT AND OTHERS

v.

THE KAMARHATI COMPANY, LIMITED.

---

DELIVERED BY SIR LANCELOT SANDERSON.

Printed by  
Harrison & Sons, Ltd., St. Martin's Lane, W.C.2.  
1929.