

Privy Council Appeal No. 86 of 1938

Bengal Appeal No. 47 of 1936

Probodh Kumar Das and others - - - - *Appellants*

v.

The Dantmara Tea Co. Ltd. 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 10TH OCTOBER, 1939

Present at the Hearing:

LORD MACMILLAN

SIR GEORGE RANKIN

MR. M. R. JAYAKAR

[*Delivered by* LORD MACMILLAN]

This appeal relates to a tea garden in the district of Chittagong, known as the Kaiyacherra Tea Estate, which at one time belonged to the Kaiyacherra Tea Company, Limited. The estate was mortgaged to Messrs. Gillanders, Arbuthnot & Co. of Calcutta who in 1930 obtained an order for the compulsory winding-up of the Tea Company. Thereafter the estate was put up to auction by the liquidators and purchased by Messrs. Gillanders, Arbuthnot & Co. Without obtaining any conveyance in their favour Messrs. Gillanders, Arbuthnot & Co. on 10th October, 1931, by an interchange of letters of offer and acceptance agreed to sell the estate to one S. N. Roy, who paid the first instalment of the price and entered into possession. No conveyance was ever executed in pursuance of this contract of sale but the plaintiffs in the present suit, now the appellants, claim to have acquired at least in part the purchaser's rights under it. The estate has been the subject of a complicated series of transactions which it is fortunately not necessary to detail for the purpose of deciding the only question argued before their Lordships. These transactions are fully set out in the judgments of the Subordinate Judge and the High Court and account for the varied assortment of defendants to the suit.

The first defendants and respondents, the Dantmara Tea Company, Limited, to whom alone it is necessary to refer, claim on the other hand to be the proprietors of the estate under (1) a duly registered deed of assignment in their favour by the partners of Messrs. Gillanders,

Arbuthnot & Co., dated 1st June, 1934, which narrates *inter alia* the failure of S. N. Roy to complete the contract of sale of 10th October, 1931, and (2) a duly registered deed of sale, also dated 1st June, 1934, by the Kaiyacherra Tea Company, Limited, and the liquidators of that company and by the partners of Messrs. Gillanders, Arbuthnot & Co.

The position accordingly is that the plaintiffs have no title to the estate of which they are at least partly in possession, but rely on the contract of sale of 10th October, 1931, while the defendants, the Dantmara Tea Company, Limited, have a duly completed title to the estate but are not in possession of it.

The real bone of contention between the parties is the right to the export quota under the India Tea Control Act (XXIV of 1933), which was passed *inter alia* to regulate the export of tea from India. By section 3 of that Act an Indian Tea Licensing Committee was set up and under other provisions of the Act it was entrusted with the task of determining the total quantity of tea, termed the "export quota," which the owner of each tea estate should be permitted to export, and of issuing export licences. These quota rights are assignable and are of obvious value. The Licensing Committee in 1933-34 issued the export quota rights for the Kaiyacherra estate to the plaintiffs or to them and S. N. Roy. In 1934-35 the Committee, having become aware that the title to the estate was in dispute, declined to issue any export quota rights in respect of it. Subsequent to the execution and registration of the conveyance of the estate to the defendants, the Dantmara Tea Company, Limited, the Licensing Committee have recognised them as entitled to the export quota rights of the estate. Thus the plaintiffs have in part at least possession of the estate but have no export quota rights, while the defendants, the Dantmara Tea Company, Limited, hold the export quota rights of the estate but have not possession of it.

It is in these circumstances that the plaintiffs brought the present suit in which they seek to have it declared that the Dantmara Tea Company, Limited, and others have no right or title to the estate and are debarred from enforcing any right to the estate, including the right to sell tea under the export quota allotted to it or to transfer the quota rights to any person. They also seek an injunction.

The defendants challenged the right of the plaintiffs to bring the suit and maintained that they had no title to sue. The Subordinate Judge rejected this plea and decided generally in favour of the plaintiffs but on appeal the learned Judges of the High Court were of opinion that the suit was not maintainable and dismissed it.

It was conceded by the appellants at their Lordships' bar that, apart from section 53A which was added by amendment in 1929 to the Transfer of Property Act, 1882, they had no case. But they contended that, notwithstanding that they had not chosen to sue for specific performance of the contract of 10th October, 1931, and notwithstanding that they had taken no steps to complete their title, they were

nevertheless entitled under section 53A actively to assert the rights of a proprietor in virtue of the contract of 10th October, 1931, and their possession.

The position of the law under the Transfer of Property Act, 1882, before the addition to it of section 53A has on more than one occasion been expounded by their Lordships and reference may be made to the case of *Pir Bakhsh v. Mahomed Tahar*, (1934) 61 I.A. 388, where the subject was fully discussed. It is clear that the appellants were well-advised in conceding that if they could not invoke section 53A they were out of Court.

In their Lordships' opinion the amendment of the law effected by the enactment of section 53A conferred no right of action on a transferee in possession under an unregistered contract of sale. Their Lordships agree with the view expressed by Mr. Justice Mitter in the High Court that "the right conferred by section 53A is a right available only to the defendant to protect his possession." They note that this was also the view of their late distinguished colleague, Sir Dinshah Mulla, as stated in the second edition of his treatise on the Transfer of Property Act at p. 262. The section is so framed as to impose a statutory bar on the transferor; it confers no active title on the transferee. Indeed, any other reading of it would make a serious inroad on the whole scheme of the Transfer of Property Act.

It was suggested that by obtaining the export quota rights from the Licensing Committee the Dantmara Tea Company, Limited, as persons claiming under the transferors, were enforcing a right in respect of the property against the appellants as persons claiming under the transferee, and could be enjoined at the appellants' instance from so doing, but in their Lordships' view there has been no enforcement within the meaning of the section of any right against the appellants.

Their Lordships will accordingly humbly advise His Majesty that the appeal be dismissed. Separate printed cases were presented on behalf of the respondents, the Dantmara Tea Company, Limited, and the respondents, the Chandranagar Tea Company, Limited, who claimed to have acquired an interest in the estate, and were separately represented at their Lordships' bar, but the appellants will pay only one set of costs to the respondents.

In the Privy Council

PROBODH KUMAR DAS AND OTHERS

v.

THE DANTMARA TEA CO. LTD. AND
OTHERS

DELIVERED BY LORD MACMILLAN

Printed by His Majesty's Stationery Office Press,
POCOCK STREET, S.E. 1.

1939