

APPELLATE CIVIL.

Before Holmwood and Chapman JJ.

JOGENDRA NATH GOSWAMI

v.

CHANDRA KUMAR MOZUMDAR.*

Chukani Right—Contract of sale of a chukani tenure—Misrepresentation by non-disclosure of facts—Suit for rescission by purchaser—Transfer of Property Act (IV of 1882), s. 55—Duty of seller.

A *chukani* tenure in the District of Rungpur is not a temporary tenure under the Transfer of Property Act terminable at six months' notice but a *raiyati* leasehold which may develop into occupancy right.

When the vendor is informed by the purchaser of his object in buying certain property and the lease contains covenants which will defeat that object, mere silence will, in equity, be equivalent to misrepresentation.

Flight v. Barton followed (1).

SECOND appeal by Jogendra Nath Goswami, the plaintiff.

This appeal arose out of a suit for recovery of the halves of currency notes of the value of Rs. 1,400 given by the plaintiff to the defendant for a plot of land which the plaintiff contracted with the defendant to buy for Rs. 1,400.

Plaintiff informed the defendant that he was buying the land to settle his grand-nephew permanently thereon and enquired if it would answer the purpose. Plaintiff subsequently found that the defendant did not possess a transferable *chukani* right in the land.

* Appeal from Appellate Decree, No. 2827 of 1911, against the decree of Prankrishna Biswas, District Judge of Rungpur, dated July 26, 1911, affirming the decree of Ali Ahmed, Subordinate Judge of Rungpur, dated Sept. 30, 1910.

(1) (1832) 3 M. & K. 282.

Hence the suit for refund of the half notes The learned Subordinate Judge held that the defendant had a transferable right to the land and he accordingly directed the defendant to execute a *kabala* on receipt of the other halves of the notes. Plaintiff, thereupon, appealed to the District Judge of Rungpur and contended that the defendant had given him to understand that he had a permanent right to the land which he had not, and the plaintiff was therefore entitled to rescind the contract. He also contended that the defendant had no transferable rights.

The learned District Judge held that there was no misrepresentation and dismissed the appeal. Hence the second appeal.

Babu Mahendra Nath Roy (with him *Babu Hira Lal Sanyal*), for the appellant. The suit has been dismissed on one of the issues but the material questions have been overlooked. It has been found that the seller has a transferable interest but has he such interest as he professed to transfer (Transfer of Property Act, s. 55(2)). If he had no such interest, plaintiff should succeed.

It is also necessary to determine what was it exactly that the plaintiff understood he was buying and whether the defendant, by his conduct, induced him to believe that he held a permanent interest. Defendant knew plaintiff's object in buying the land. His silence amounted to misrepresentation: *Darts' Vendors and Purchasers*, 7th. Ed., 103-04; *Flight v. Barton* (1). If the defendant is innocent of wilful misrepresentation, even then, if the plaintiff was under a wrong impression and the defendant was aware of it, the contract could not stand.

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Babu Kishori Lal Sircar (with him *Babu Harish Chandra Roy*), for the respondent. Plaintiff knew the nature of my right. He was a sub-tenant on the land for years. He entered into the contract with his eyes open.

Rescission can only be allowed under circumstances specified in s. 35 of the Specific Relief Act.

Even if there was any misrepresentation the contract is not voidable for the plaintiff had the means of discovering the truth with ordinary diligence. S. 19 of the Contract Act (Exception). The plaintiff could have discovered the truth if he was so minded.

Babu Hira Lal Sanyal, in reply.

HOLMWOOD AND CHAPMAN JJ. This second appeal arises out of a suit brought by the plaintiff for rescission of a contract and for return of half-notes to the value of 1,400 rupees; in the alternative if it be found by the Court that the defendant had transferable *chaukani* right in the land in suit and if it be held that the plaintiff is bound according to law to purchase the said land from the defendant, then the defendant may be directed to execute a conveyance in respect of the said land containing lawful and proper terms.

The case in the first Court was considered on six issues that were framed and it is a curious circumstance that in both the Courts below this case has been decided exclusively on a consideration of the 6th issue which carefully avoids all the real points which arise in the case. That issue is whether the defendant has got any interest in the property proposed to be sold, and if so, whether that interest is transferable. Now without framing that issue at all it is obvious both upon the pleadings and upon the facts that the defendant has got an interest in the property and that that interest is transferable. But the question which

arises in this case is whether he had represented that interest to be other than it really was and whether he thereby had deceived the plaintiff into buying what he had no intention of buying.

The simple questions, which the Subordinate Judge says are immaterial, raised in the 2nd, 3rd, 4th and 5th issues really entitle the plaintiff to have this question of misrepresentation discussed, because if he was deceived he is entitled to receive back the other halves of the currency notes, and the defendant is not entitled to receive the remainder of the consideration, and the plaintiff could not be barred by estoppel from rescinding the contract, if the contract was based on misrepresentation.

The question whether the plaintiff was deceived is one which largely rests upon the question of the *chukani* right. This the Subordinate Judge in the first Court has clearly decided erroneously. He says *chukani* right is not equivalent to occupancy right nor to *mokarari istemrari*, it always denotes a temporary right. But we have been asked to hold he was right on the authority of certain passages in Dr. W. W. Hunter's Gazetteer for the district of Rungpur. Unfortunately those passages are self-contradictory and carry with them their own refutation. Dr. Hunter says *chukanidars* are under-tenants who hold their lands from cultivators of a higher class and can be ejected at the will of the superior tenant. He gives no authority for the statement. In another passage he speaks of *chukanidars* as *mokararidars*. We prefer to follow a far higher authority Dr. Field who went into the matter extremely carefully, collected a most valuable table of all the various tenures in Bengal, and specially dealt with the rights of *jotedars* and *chukanidars* under them in the district of Rungpur, from which this case comes. Citing the

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report of the Rent Commission in 1876 it is said that "a large majority of jotedars have small holdings and are raiyats proper. But a large number of jotedars have raiyats under them who are called either *chukanidars* or *korfa projas*. The *chukanidars* too have often raiyats under them, and in some cases, especially in the larger jotes there are four or more degrees before you get to the actual cultivators. Jotes are saleable quite irrespective of the term during which they have been held, whether jotes held direct from the zamindar or *chukani jotes* which are held from a jotedar. There is therefore a permanent element in these *chukani* rights which may develop into an occupancy right and they are freely saleable even before they develop into occupancy rights." In this case if the defendant had such a right, it must have already matured into an occupancy right, inasmuch as he had held this *chukani* or so-called *chukani* for more than 12 years.

The learned Judge in appeal says nothing about *chukani* rights; but he finds as a fact that the defendant never had anything but a yearly tenancy created for one year for the purpose of building temporary dwelling-houses and carrying on jute business, and that lease stood in the name of the defendants' brother who is dead, and the defendant is his heir. The defendant continued to hold it after the expiration of the lease and no new lease was ever granted. The plaintiff appears to have held this land or a portion of it on a sub-lease for 9 years. But on this finding it is clear that the tenancy is a precarious one, and that under the Transfer of Property Act the defendant and his vendee would be liable to be ejected on six months' notice at the end of any year of tenancy. This certainly is not a *chukani* right. It is urged that the defendant's own pottah describes it as *chukani* right, and that the plaintiff cannot have been deceived, and

with due diligence he could have discovered what the real right was.

The question which really arises in this case is; did the defendant deceive the plaintiff by holding out to him according to the words of his own written statement that he had a *chuk ni* right for sale, which he was willing to let the plaintiff purchase for the purpose of permanently settling his nephew on the land, when he had in reality nothing but a leasehold from year to year transferable only under the Transfer of Property Act. It is clear from the written statement that the defendant knew that the plaintiffs' intention was to permanently settle his nephew upon this land after the purchase; and it has always been held as laid down in the case of *Flight v. Barton* (1), that if the vendor be informed by the purchaser of his object in buying and the lease contains covenants which will defeat that object, mere silence will in equity be equivalent to misrepresentation; in other words the defendant was bound to disclose to the plaintiff that the word *chukani* in his lease had no meaning or at any rate not the meaning which persons residing in the Rungpur district are entitled to attach to it. But this question can only be decided by a consideration of the various documents in the case which we are surprised to see the lower Courts do not appear to have taken any notice of with the exception of the defendant's pottah. These documents are the title-deeds of the Shahs, the defendant's title-deeds the kabala itself and the correspondence between the parties. These documents have not been printed in the paper-book probably because the lower Courts did not refer to them. But it is obvious that the question whether the defendant deceived the plaintiff cannot

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be decided without further reference to all these matters.

The case therefore must go back for consideration of this point. If it be found that the defendant had nothing but a leasehold right from year to year under the Transfer of Property Act, and if the kabala and the correspondence show that he purported to sell the *chukani* right and not merely the right he acquired from the Shahs, whatever that right might be, then the defendant must be held to be guilty of fraudulent concealment and the plaintiff is entitled to have his half-notes back and cancel the contract. If on the other hand it be held that the defendant has *chukani* right as defined by Dr. Field and as generally recognised in the Rungpur district, or that the plaintiff had full knowledge that what is described as *chukani* right in the pottah of the defendant was nothing more than a transferable yearly tenancy for non-agricultural purposes, then the plaintiff cannot succeed. As regards the contention that the plaintiff had the means to discover the truth with ordinary diligence we may again point out that if the use of the word *chukani* in the defendant's title-deeds misled the plaintiff, or if as the plaintiff says, the defendant refused to show him his title-deeds, then the exception to section 19 of the Contract Act does not apply.

The case will go back to the lower Court to be decided with reference to the directions we have given in this judgment. The lower Court will not take any further evidence but will consider the evidence and the documents that are already on the record. The costs will abide the result.

S. K. B.

Case remanded.