

ORIGINAL CIVIL.

Before Chaudhuri J.

1918

July 18.

ROOPCHAND JANKIDAS

v.

THE NATIONAL BANK OF INDIA, LD.*

*Shares—Jute shares—Contract Act (IX of 1872) s. 108—“ Possession ”
—Share certificates—Blank transfers—Negotiable instruments.*

The word “ possession ” in Contract Act (IX of 1872), s. 108, exception (i), does not include possession for a specific purpose.

Share certificates accompanied by transfer deed endorsed in blank do not thereby become negotiable instruments.

Greenwood v. Holquette (1), *Biddomoye v. Sittaram* (2), *Seager v. Hukma Kessa* (3), *Naganada v. Bappu* (4) and *Hazarimull Shohantal v Satish Chandra Ghose* (5), referred to.

ABOUT the end of October 1916, the National Bank of India purchased on behalf of a constituent, 25 Kelvin Jute shares. The share certificates had with them a blank deed of transfer signed by the last registered owner. Following the rule in the Bank, the share certificates together with the transfer deed were made over by the officer in charge of the Safe Custody Department to Ashutosh Ghosh, the head clerk of that department, to be sent to the company for the purpose of the constituent's name being registered in their books. Ashutosh, instead of sending them to the company for such registration, fraudulently disposed of them to one Sham Das Sil. The Bank did not know of the fraud till the end of November

* Original Civil Suit No. 65 of 1917.

(1) (1873) 12 B. L. R. 42.

(3) (1900) I. L. R. 24 Bom. 458.

(2) (1878) I. L. R. 4 Calc. 497.

(4) (1903) I. L. R. 27 Mad. 424.

(5) (1918) I. L. R. 46 Calc. 331.

1916. In the meantime the shares passed from Sham Das Sil to Mungiram Banger & Co, and from them to the firm of Baijnath Champalall who sold them to the firm of Roopchand Jankidas. All of them were *bonâ fide* purchasers for full value.

This suit was by Roopchand Jankidas against the National Bank of India, Baijnath Champalall claiming ownership in the said shares.

Mr. A. N. Chaudhuri, Mr. N. N. Sircar and Mr. I. B. Sen, for the plaintiff firm.

Mr. Langford James and Mr. Surita, for the defendant Bank.

Mr. H. D. Bose and Mr. S. Ghose, for the defendant Baijnath Champalall.

Cur. adv. vult.

CHAUDHURI J. In this case the plaintiff firm purchased 25 Kelvin Jute shares on the 2nd November, 1916, from the defendant firm of Baijnath Champalall. Baijnath Champalall had bought them from Mungiram Banger & Co. who had purchased them from one Sham Das Sil who in his turn had purchased them from one Ashutosh Ghosh on the 1st November 1916. Before Ashutosh Ghosh obtained possession of these shares, they belonged to the National Bank of India who are defendants in this action. The Bank purchased them for one of their constituents through their brokers, Place Siddons and Gough. The purchase was made about the end of October 1916. Following the rule in the Bank, these shares were made over to the officer in charge of their Safe Custody Department. It is also the practice of the Bank to get the shares registered in the Company in the name of their constituents on whose behalf they are purchased. With that object these shares were made over by Ross, the officer then in charge of the Safe Custody Department, to Ashutosh

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Ghosh the head clerk of that Department, who without sending the shares to the company for such registration fraudulently disposed of them to Sham Das Sil. The Bank did not know that any fraud had been committed or that these shares had been dealt with by Ashutosh Ghosh, until some time about the end of November 1916. In the meantime these shares passed from hand to hand as above stated. The purchase by the plaintiff from Baijnath Champalall and by Baijnath Champalall from Mungiram Banger & Co. and also the purchase by Sham Das Sil were *bonâ fide* purchases: full value was paid for these shares and they passed from hand to hand. Attached to the share certificate was a deed of transfer endorsed in blank by the last registered owner, one H. P. Stringfellow.

It was contended that inasmuch as Ashutosh Ghosh was in possession of these documents, he could transfer good title to Sham Das Sil, and the subsequent sellers passed good title to their respective purchasers. Now the use of the word "possession" in section 108, Exception (i), does not include possession of this character. These shares were in the custody of an officer of the Bank and were made over to Ashutosh Ghosh for a particular purpose, and he dishonestly dealt with them. It was held in *Greenwood v Holquette* (1), that the exception did not apply in the case of qualified possession, such as that of a hirer of the goods or where the possession was for a specific purpose. A clear distinction has been made in this Court in respect of juridical possession and mere possession. The same word is used in section 178 of the Contract Act, in respect of pledges, and it has been held in, amongst other cases, *Biddomoje v. Sittaram* (2),

(1) (1873) 12 B. L. R. 42.

(2) (1878) I. L. R. 4 Calc. 497.

Seager v. Hukma Kessa (1), and *Naganada v. Bappu* (2), that a pledger's possession was not such possession as entitled him to deal with the goods in fraud of the rights of the owner. The Bank never intended Ashutosh to deal with these shares, never authorised him to deal with them and did not do anything by which it might be presumed that he had authority, express or implied, to deal with these shares. It was an absolutely dishonest dealing by him without the knowledge of the defendant Bank.

It was next contended that share certificates accompanied by the blank transfer deed were negotiable instruments by mercantile usage and were transferable freed from all equities, and complete title passed from purchaser to purchaser upon delivery of the certificate and transfer deed. I have just dealt with the question as to whether such share certificates can be considered as negotiable instruments in my judgment in suit No. 337 of 1918 [*Hazrimull Shohanlal v. Satish Chandra Ghose* (3)], and therefore it is unnecessary to repeat myself. There is a little more evidence in this case about usage than there was in suit No. 337. A member of the firm of Place Siddons and Gough stated that if the purchaser wanted his name registered and if the company refused to register the document, then they as his brokers would not consider the script as good delivery but would return it to the vendor. There was some evidence from the Bank of Bengal which does not purchase shares on its own account, but purchases them on account of constituents. The officer in charge of that department of the Bank said that they did not recognise these documents until registration was effected in the name of the purchaser. There is

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evidence that in the market such share certificates accompanied by transfer deeds blank endorsed by the last registered holder, pass from hand to hand and registration is effected by the last purchaser if he desires to register his name; but apparently, in order to avoid the cost of stamps and, to save time, registration is not usually, effected; but that does not, in my opinion, give a negotiable character to the certificate. The defendant Bank at the same time lost another lot of shares which curiously came back to them after having passed from hand to hand. This is relied upon as a strong circumstance showing the negotiable character of the documents. I do not think that circumstance of additional value. The document on the face of it does not show that it is transferable and it is well known that registration is necessary for legal title and that registration has to be effected in terms of the Articles of Association. Several purchasers in fact want registration to be effected and do not accept the delivery of the certificate with a transfer deed blank endorsed as effective. For the reasons I have already given I cannot treat the transfers in this case as transfers of a negotiable instrument. I hold that the Bank is entitled to recover these documents. They held these shares originally as bankers for their constituent but they have made over shares of equal value to him and are now entitled to possession of these shares on their own account; and the plaintiff is not entitled to the declaration he seeks for. I hold that the plaintiff is entitled to recoup his loss from his vendor and I make an order that he is to be paid by Baijnath Champalall the value paid by him for these shares with interest at six per cent. from the date of his purchase.

Ashutosh Ghosh, who abstracted these documents was prosecuted; but the jury differing, a retrial was

ordered, but, before the retrial took place, he committed suicide.

I shall deal with the question of costs after hearing counsel who have expressed a desire to be heard.

N. G.

Attorney for the plaintiff: *O. C. Gangooly.*

Attorneys for the defendant bank: *Sanderson & Co.*

Attorney for the defendant Baijnath Champalall:
N. C. Bose.

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HOOPCHAND
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APPELLATE CIVIL.

Before Teunon and Richards JJ.

MAHARAJ BAHADUR SINGH

v.

JADAB CHANDRA GHOSE HAZRA.*

1918

May 13.

Suit for Rent—Rent reserved—Company's Sicca Rupees, ambiguity of expression—Sikka or Sicca Rupee and Company's Rupee, meaning and history of, and difference between.

In a *kabuliat*, dated the 8th July, 1850, the annual rent reserved was stated to be "Company's sicca rupees 96 :—"

Held, that the expression "Company's sicca rupees" mentioned in that document meant rupees in current coin and not sicca rupee.

Per CURIAM. The course of conduct, the date of the document, the stamp-duty and the reference to current coin in the sentence referring to the Stamp Act lead us to the conclusion that in this case the rent annually payable is not the equivalent of 96 sicca rupees, but is 96 rupees in current coin.

*Appeal from Appellate Decree, No. 146 of 1916, against the decree of M. Yusuf, District Judge of Murshidabad, dated April 5, 1916, affirming the decree of Ramesh Chandra Basu, Munsif of Lalbagh, dated Sep. 29, 1915.