PRIVY COUNCIL.

BARABONI COAL CONCERN, LIMITED

v.

GOKULANANDA MOHANTA THAKUR.

P. C.*
1933

Nov. 10;
Dec. 12.

[ON APPEAL FROM THE HIGH COURT AT CALCUTTA.]

Parties—Mining lease by shebâits—*Suit by one* shebâit *for share of royalties—Construction of lease—Image with half interest in leased property—Royalties "to extent of interest."*

Where four *shebâits* of a family deity have executed a mining lease of the idol's interest in a *mouzâ*, one of them cannot maintain, with or without the consent of the others, a suit against the lessee for a fourth share in the royalties reserved, and the suit is not made regular by the plaintiff joining the other *shebâits* as defendants.

Narendra Nath Kumar v. *Atul Chandra Banerjee* (1) approved.

The lease, providing for payment of royalties at specified rates per maund of coal raised "to the extent of the interest" of the idol, and the idol having a half interest in the *mouzâ*, the royalties are payable to the four *shebâits* upon only half the coal raised.

Decree of the High Court reversed.

Appeal (No. 22 of 1932) from a decree of the High Court (February 18, 1930) affirming a decree of the Subordinate Judge of Asansol (July 12, 1927).

The plaintiff, respondent No. 1, and his three brothers were *shebâits* of their family idol. On May 24, 1901, they executed a mining lease of the interest of the idol in a *mouzâ*. The material terms of the lease appear from the judgment of the Judicial Committee. It was found that the interest of the idol in the *mouzâ* was an 8-anna share. The defendant company (appellants) were transferees of the lessees' interest in the lease. They were also transferees of three other mining leases which together covered the other 8-anna share in the *mouzâ*, and had been raising coal from the property since 1914.

**Present*: Lord Thankerton, Lord Alness and Sir Lancelot Sanderson.

(1) (1917) 27 C. L. J. 605.

1933

Baraboni Coal Concern, Limited v. *Gokulananda Mohanta Thakur.*

In 1924, the first respondent instituted the present suit against the appellants, claiming a one-quarter share in royalties (described in the lease as commission) due under the lease executed by the four *shebâits*; he joined the other *shebâits* as defendants. The appellants, by their written statement, contended, *inter alia*, that an individual *shebâit* could not maintain the suit, and that, in any event, under the terms of the lease only an 8-anna share of the royalties was payable. It was no longer in dispute that, as between the *shebâits*, the interest of the plaintiff was a 4-anna interest.

The High Court (Mukerji and Guha JJ.), affirming the trial judge, held that the plaintiff could maintain the suit, and was entitled to a decree on the basis that the royalties mentioned in the lease were payable upon the whole of the coal raised, not on an 8-anna share.

One of the other *shebâits* had also brought a similar suit against the appellants. The suits were tried together; an appeal to the High Court in that suit from the decree of the trial judge was withdrawn on a compromise.

Upjohn K. C. and *Jardine* for the appellants.

Narasimham for the respondents.

[Reference was made for the appellants to *Abdul Gofur Mandal* v. *Umakanta Pandit* (1) and *Narendra Nath Kumar* v. *Atul Chandra Banerjee* (2)].

The judgment of their Lordships was delivered by

Lord Alness. The first respondent, in his plaint, describing himself as servitor and *shebâit* to Sree Sree Ishwar Gopinath Jiu idol (the respondents' family deity), sought to recover Rs. 62,382, 7 annas, 15 *gandâs*, in respect of his alleged one-fourth share, as one of the four *shebâits* of the said deity, of the entire royalties on the entire raisings of coal in

(1) (1914) 19 C. W. N. 260. (2) (1917) 27 C. L. J. 605.

mouzâ Manoharbahal for the six years ending 13th April, 1924. The suit was directed against: (1) the appellant company and (2) the second, third and fourth respondents, as defendants *pro forma*—they being the first respondent's co-*shebâits* at the time when the suit was instituted.

The first respondent's claim was based on a lease, dated 24th May, 1901, granted by four lessors, *viz.*, the first and second respondents, as *shebâits* aforesaid, the grandfather of the third respondent, and the father of the fourth respondent—on the one hand, in favour of one Kuverji Bhoja, the predecessor in title of the appellant company, on the other hand. The soundness of the first respondent's claim falls to be judged, in their Lordships' opinion, by the terms of the lease referred to.

It may be convenient at this stage to set out the relevant part of the lease. It is as follows:—

Mouzâ Manoharbahal, in parganâ Sergarh, within police station and sub-registry Asansol, *chouki* Râniganj and district Burdwan, is the rent free *debattar* property of your family deity Sree Sree Ishwar Gopinath Jiu *Thâkur*. You have *parichâriki* right in the said property as *shebâit*. On my making a proposal to take a settlement of the interests of your family deity in the said *mouzâ* for raising coal by excavating a coal mine under the ground of the said *mouzâ*, you grant unto me a settlement, on the following terms and conditions, of the whole interest that your family deity has in the said *mouzâ* for the benefit of the said family deity and for increasing the income of the said *debattar* (estate). I take the settlement on the terms following, and agree:—

1. That I shall raise coal from the ground underneath the said *mouzâ* according to the boundaries given below and shall pay a commission of 1 pice per maund of steam coal, 1½ pice per maund of soft and hard coke, two annas per ton of dust coke, and ½ pice per maund of rubble coal to the extent of the interest of your said family deity. I shall pay off the commission due on the raisings for one month by the seventh day of the month following. If I fail to pay, I shall be liable to interest at 1 per cent. I shall not be entitled to excavate and take away coal that is under the existing homestead lands. I shall be entitled to excavate and take away the coal from under the new settlements that may be formed in future outside the village. I shall be responsible for the loss if I cut away coal under the homesteads in the village.

4. That on no account will the raising of steam coal be less than 2,56,000 maunds any year. In case the raisings be less than 2,56,000 maunds, or if there be no raisings at all or if the raisings be suspended, or if I do not make any raisings, then I shall pay you a minimum royalty of Rs. 4,000 a year. The minimum royalty will be paid in four equal instalments to yourselves or your authorised officers on taking receipts. I shall not be entitled to plead payment of commission without receipt, and if I do so, it will not be entertained. If the money be not paid according to the *kists* aforesaid, I shall be liable to pay interest at 1 per cent. per month.

1933

Baraboni Coal Concern, Limited v. *Gokulananda Mohanta Thakur.*

The Subordinate Judge of Asansol, district Burdwan, and, on appeal, the High Court, allowed the claim of the first respondent, with a small deduction, and gave judgment in his favour. Against these judgments this appeal is taken.

Two questions were argued before their Lordships' Board:—

(1) Whether a separate suit by one of the four *shebâits* of the deity for a fourth share of the royalties payable under the lease is maintainable?; and

(2) It being agreed that the demise in the lease was only of the interest of the respondents' deity in the *mouzâ*, *viz.*, an 8-anna share, whether the commission under clause 1 of the lease falls to be calculated at the prescribed rate upon the total quantity of coal raised, or only on the share of that coal which corresponds to the 8-anna interest of the deity.

The first question, if concluded against the respondents, is in itself sufficient to ensure the success of this appeal. It, therefore, merits and has received careful consideration from their Lordships' Board.

A study of the lease discloses that the claim under consideration is concerned solely with the property of the family deity in the mine. The respondents were merely interested in it as *shebâits*. In these circumstances, it is *prima facie* difficult to see how one of them can competently sue for his share in the idol's interest. The terms of the lease would seem to forbid that course. They afford no warrant for splitting up the property of the family deity in the manner in which the first respondent essayed to do. If confirmation of that view be desired, it will be found in the case of *Narendra Nath Kumar* v. *Atul Chandra Banerjee* (1). The claim made by the respondent would thus seem to be excluded.

Apart from that, however, the lease discloses, in their Lordships' opinion, a joint demise or contract.

(1) (1917) 27 C. L. J. 605.

That being so, in their Lordships' judgment, no one of the four lessors, with or without the consent of his co-lessors, can sue for an aliquot part of the whole. The suit must be for the whole of the interest demised, else it fails. This is not the case, which is familiar, where one joint contractor has invited his co-contractors to join with him in a suit, where they have refused to do so, and where, accordingly, he joins them as *pro forma* defendants. In that case, differing from this case, the claim made is for the entire amount of the joint interest.

The only answer made by counsel for the first respondent to this argument was that the conduct of parties, after the lease was signed, in accordance with which each lessor for a time accepted separate payments of royalties, controls the stipulations in the lease, and vouches an agreement between parties to vary its terms. Their Lordships have no hesitation in rejecting this contention. The facts do not support it. Nay, more: it sins against the familiar principle affirmed in the case of the *North Eastern Railway Company* v. *Hastings* (*Lord*) (1)—that where the words in a deed are clear, as they are in this case, the subsequent conduct of parties is an irrelevant consideration.

Their Lordships desire to add that the view which they have expressed, in their opinion, accords with commonsense and equity. If the first respondent's contention be sound, then each one of the four lessors under the lease might, successively or simultaneously, harass the appellants by separate suits. In the present case, there has already been a second suit. Such a result, in their Lordships' view, is oppressive, and it is not sound in law. Their Lordships, accordingly, reach the conclusion that the first respondent's claim was misconceived, and that they have no option but to disallow it.

That is sufficient for the determination of this appeal. But, inasmuch as the conclusion stated

(1) [1900] A. C. 260.

1933

Baraboni Coal Concern, Limited v. Gokulananda Mohanta Thakur.

might be deemed to rest on technical grounds, inasmuch as it is desirable, in the interests of future peace among the parties to the lease, to decide what its true construction is, and, inasmuch as their Lordships have formed a definite opinion on that topic, they do not hesitate to express it.

The second question may be thus expressed—What is the meaning and effect of the undertaking embodied in the first clause of the lease? That passage must be interpreted in light of the admitted fact that the interest of the family deity in the *mouzâ* is 8 annas.

Now the clause under construction, in their Lordships' opinion, is inartistically and clumsily drawn. They, however, entertain no doubt that the words "to the extent of the interest of your said family "deity" are limiting in their character. That limitation is of the following character. The rate of the royalty payable is clear and undisputed. The only question is—in respect of what raisings is that rate payable? On what subject matter is it to be computed? Is it on the whole maunds of steam coal, or upon the interest of the idol, *viz.*, eight annas?

Their Lordships cannot doubt that the answer to these questions must be that the royalty is payable on raisings which represent the interest of the family deity in the *mouzâ*, *viz.*, an 8-anna share. For the subject matter of the demise is the interest of the family deity—no more and no less. The abovementioned words must be accorded *some* meaning: and only thus, in their Lordships' judgment, can full effect be given to them. In short, their Lordships are prepared to hold, and do hold, that the words "to the extent of" are equivalent, in their environment, to the words "on that amount which "represents the interest of the family deity."

The competing interpretation which was suggested in argument would involve substituting the words "as a return for" or "in respect of" for the words "to the extent of." This course does not appear to

their Lordships to be admissible. It is to be observed that clause 4 of the lease, on which the first respondent founded in argument, and which provides for the payment of a minimum royalty, deals with a different subject matter from clause 1, and that moreover it does not contain the vital words of clause 1, "to the "extent of the interest." The proper interpretation of these words, in their Lordships' opinion, supplies the key to the riddle. Their Lordships are then of opinion that the stipulated royalty is payable only on coal raisings which correspond with the extent of the interest of the respondents' family deity in the *mouzâ*, *viz.*, eight annas.

That being so, their Lordships will humbly advise His Majesty that the appeal should be allowed, the judgments of the lower courts set aside, and the suit dismissed with costs in both courts. The plaintiff-respondent will pay the appellants' costs of the appeal.

Solicitors for appellants: *Oswald Hickson, Collier & Co.*

Solicitor for respondent No. 1: *R. S. Nehru.*