The Indian Law Reports.

Calcutta Series.

PRIVY COUNCIL.

KRISHNA PRASAD LAL SINGHA DEO

v.

BARABONI COAL CONCERN, LTD.

P. C.*
1937

April 29, 30;
June 4.

[ON APPEAL FROM THE HIGH COURT AT CALCUTTA.]

Estoppel—Indian Evidence Act (I of 1872), s. 116, whether exhaustive.

Section 116 of the Indian Evidence Act does not deal or profess to deal with all kinds of estoppel which may arise between landlord and tenant. It deals with one cardinal and simple estoppel.

It does not apply to disentitle a tenant to dispute the derivative title of one who claims to have since the beginning of the tenancy become entitled to the reversion, though in such a case there may be other grounds of estoppel.

It is not limited to the case of a tenant who, when he took the lease, was not already in possession.

Cuthbertson v. *Irving* (1); *Claridge* v. *Mackenzie* (2); *Bilas Kunwar* v. *Desraj Ranjit Singh* (3) and *Vertannes* v. *Robinson* (4) referred to.

Lal Mahomed v. *Kallanus* (5) and *Ketu Das* v. *Surendra Nath Sinha* (6) distinguished.

CONSOLIDATED APPEALS (No. 35 of 1936) from a decree of the High Court (July 20, 1934) which reversed a decree of the Subordinate Judge of Asansol (December 23, 1929).

The material facts are stated in the judgment of the Judicial Committee.

Sir Thomas Strangman for the Baraboni Coal Concern, Ltd. [Referred to s. 108(*a*) & (*c*) of the Transfer of Property Act and dealt with the facts of the case.]

**Present*: Lord Macmillan, Sir Shadi Lal and Sir George Rankin.

(1) (1859) 4 H. & N. 742; 157 E.R. 1034.
(2) (1842) 4 Man. & G. 143; 134 E.R. 59.
(3) (1915) I. L. R. 37 All. 557; L. R. 42 I. A. 202.
(4) (1927) I. L. R. 5 Ran. 427; L. R. 54 I. A. 276.
(5) (1885) I. L. R. 11 Cal. 519.
(6) (1903) 7 C. W. N. 596.

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Vaisey, K. C. and *Chatfield* for Chandanmull. I am not affected by the contractual interest between the Baraboni Coal Concern, Ltd. and the Maharaja. I have never been in any contractual relationship with the plaintiff. *Ram Chandra Chatterji* v. *Pramatha Nath Chatterjee* (1).

[Their Lordships intimated that they did not intend to adjudicate on the question of title between Kumar Raj Krishna and the Thakurs, but to leave that open and that they wished to hear Mr. Dunne on the question of estoppel.]

Dunne, K. C., J. M. Parikh and *Ralph Parikh* for Kumar Raj Krishna. There is no limit in s. 116 of the Evidence Act confining it to a person put into possession by the landlord. *Vertannes* v. *Robinson* (2); *Ketu Das* v. *Surendra Nath Sinha* (3) and *Venkata Chetty* v. *Aiyanna Goundan* (4) which followed it.

The judgment of their Lordships was delivered by SIR GEORGE RANKIN. The plaint in this case was filed on November 18, 1927, and the claim of the plaintiff is for royalties due on coal raised during that year (up to the end of *Ashwin*: 17th October) from a colliery known as Manoharbahal under the terms of a lease dated January 25, 1912. The grantor of the lease is the Raja of Panchkote (defendant No. 3); the plaintiff, who is his son, claims the royalties due thereunder by virtue of a maintenance (*khorposh*) deed dated September 29, 1926, which vests the landlord's reversion in him: no dispute arises upon this assignment. The original lessee, one Radha Ballabh Mukherji, has not been impleaded, the defendants being the Baraboni Coal Concern, Ltd., defendant No. 1 ("the defendant company")

(1) (1921) 35 C. L. J. 146.

(2) (1927) I. L. R. 5 Ran. 427; L.R. 54 I. A. 276.

(3) (1903) 7 C. W. N. 596.

(4) (1916) I. L. R. 40 Mad. 561.

and two others [defendants Nos. 2 and 2(*a*)]. The defendant company are sued as assignees of the term, their assignment being by deed dated February 14, 1914: the other defendants as persons claiming to have purchased the right, title and interest of the defendant company at a sale held under the Public Demands Recovery Act (Bengal Act III of 1913) on August 17, 1927. These defendants [Nos. 2 and 2 (*a*)] say that they did not obtain possession under their purchase until March 20, 1928. The lease contained a clause (clause 14) giving the lessor a charge for royalties upon the colliery and its plant, and the plaint seeks to enforce this charge by sale.

The defence of the defendant company was that the Raja had no title to the underground rights in *mouzâ* Manoharbahal which was the *lâkhirâj debattar* property of a certain Deity. This allegation was in the written statement embroidered with or encumbered by allegations of fraud and misrepresentation on the part of the Raja and mistake on the part of the defendant company. The Subordinate Judge at Asansol dismissed the suit (December 23, 1929), holding not only that the Raja had no title but also that the defendant company had been evicted by title paramount. On appeal to the High Court at Calcutta four questions were raised and the learned Judges (Mitter and Patterson JJ.) held: (1) that *mouzâ* Manoharbahal was not part of the Raja's permanently settled estate; (2) that the underground rights therein are vested in the *lâkhirâjdâr*, *i.e.*, the Deity abovementioned; (3) that under s. 116 of the Indian Evidence Act the defendant company was precluded from disputing the Raja's title; (4) that the defendant company's plea of eviction by title paramount failed. As against the other defendants the learned Judges held that the covenant for rent was enforceable against transferees of the lease. They gave decree (July 20, 1934) against all the defendants for the sums claimed and directed a sale of the colliery and plant in default of payment by January 20, 1935.

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The ownership of mining rights in a *mouzâ* which, though within the ambit of a permanently settled estate, is rent-free *debattar* property not paying revenue to Government on its own account, raises questions of considerable difficulty, and practical persons interested in coal mining have to take account of the uncertainty involved. The defendant company, on their own case, took title to the colliery Manoharbahal in two ways and from two different sets of persons at or about the same time. (*a*) By deed dated February 14, 1914, they took an assignment from Radha Ballabh Mukherji of his lease (January 25, 1912) from the Raja. (*b*) By deed dated June 22, 1917, they took from the Official Assignee and others an assignment of certain leases granted in 1901 and 1908 by *shebâits* of the Deity: the deed of assignment reciting that an agreement to that effect had been arrived at in November, 1913, and that possession had been given to the defendant company on or about April 1, 1914. As they were taking inconsistent titles it may perhaps be presumed that the insecurity of each was reflected in the amounts of the royalties which had been covenanted for. In any event each lessor was in due course asked to reduce the royalties payable to him in view of the claims of the others. The *shebâits* do not seem to have agreed to any abatement but by a deed called a *kabuliyat*, dated November 1, 1918, and made between the defendant company and the Raja, it was recited that the defendant company had acquired title under the *shebâits* of the Deity, and it was agreed that if the Raja should establish up to the highest Court that the Deity had no rights he should be entitled to get from the defendant company a royalty of 7 annas per ton of coal instead of the 3 annas reserved by the lease of January 25, 1912, but that otherwise and in the meantime the royalty should be reduced to 2 annas per ton. Part of a new term which was to be treated as included in the lease of 1912 was as follows:—

> We shall not be competent to raise any objection to the payment of commission at the rate of 2 annas on the score of your not having title to the underground rights in respect of the said *mouzâ* or on any other account.

To take title from two rival sets of claimants may have been a good business step but it involved keeping faith with both, and it may be said at once that neither set of lessors could be got rid of at will by the simple process of failing to pay rent to the other, suffering judgment at the other's instance on the covenant for rent, and then pleading eviction by title paramount to the claim of the former. In the present case this was all that happened. Two suits for royalties were brought against the defendant company—in each case by one out of four *shebâits* of the Deity who on May 24, 1901, had joined in granting a lease of 8 annas interest in the *mouzâ*. Both suits succeeded before the Subordinate Judge of Asansol notwithstanding that the defendant company set up the title of the Raja, because the Subordinate Judge rightly held them estopped by s. 116 of the Evidence Act from disputing the plaintiff *shebâits*' title and held that there was no eviction by title paramount. His decrees (July 12, 1927) were taken on appeal to the High Court, and one was affirmed on February 18, 1930. A further appeal was taken by the present defendant company to His Majesty in Council in that case. The appeal was upheld and the judgments of the two Courts below set aside on the ground that the plaintiff as one only of four lessors had no title to sue for an aliquot part of the whole rent. Meantime, however, the plaintiff in the other suit (which was subject to the same defect of parties) had proceeded to attach the Manoharbahal colliery in execution of his decree (May-June, 1928). Thereupon a firm called Chandanmull Indra Kumar [the present defendant No. 2 (*a*)] who had purchased the colliery at a certificate-sale for road-cess in August, 1927, objected to the execution, but their claim case was dismissed (June 20, 1928). They brought a suit against the *shebâit* decree-holder to establish their right against him, and on January 29, 1929, a compromise was agreed to between them whereby this *shebâit* for his own 2 annas share agreed to recognise the firm's title to the colliery and to grant them a *pâttâ*

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on certain new terms as to royalty upon receiving Rs. 13,000. He also agreed not to execute his decree and there was a new clause granting him a charge on the colliery for future royalties. The appeal of the defendant company against his decree was compromised as part of this arrangement.

This is the only basis for any plea of eviction by title paramount and their Lordships are of opinion that the plea fails on the facts. No one of the *shebâits* has at any time sued the Raja, attacking his title, or done more than require the defendant company to perform their covenants under the lease of 1901 as assignees thereof. Apart from the consequences of their own breach of covenant and of their other debts the defendant company have not even threatened with disturbance. The plea of eviction by title paramount was not taken in the written statement nor was any issue framed upon it.

In their Lordships' view it is entirely without substance, and it is unnecessary to consider whether upon a true construction the deed of November 1, 1918, would require the defendant company to continue to pay royalties notwithstanding an eviction by title paramount.

The remaining question arises upon the plea taken by the defendant company that the Raja had no right to the property in suit. This was the second of the issues as framed, and it is as well that it should be dealt with independently of any difficulty arising to the defendant company out of the agreement expressed in the *kabuliyat* of November 1, 1918. As distinct from a plea of eviction by title paramount—a valid and meritorious defence if made out—this plea has long been regarded as inapt and incompetent in so far as it is a denial that the lessor had any title at the date of his grant. It was observed by Baron Martin in *Cuthbertson* v. *Irving* (1):—

> If the lessor have no title, and the lessee be evicted by him who has title paramount, the lessee can plead this and establish a defence to any

(1) (1859) 4 H. & N. 742 (757); 157 E. R. 1034 (1041).

action brought against him: but so long as the lessee continues in possession under the lease, the law will not permit him to set up any defence founded upon the fact that the lessor "*nil habuit in tenementis*;" and that upon the execution of the lease there is created in contemplation of law a reversion in fee simple by estoppel in the lessor, which passes by descent to his heir, and by purchase to an assignee or devisee..... The state of law in reality tends to maintain right and justice, and the enforcement of the contracts which men enter into with each other (one of the great objects of all law); for so long as a lessee enjoys everything which his lease purports to grant, how does it concern him what the title of the lessor, or the heir or assignee of his lessor, really is? All that is required of him is that, having received in full consideration for the contract he has entered into, he should on his part perform it.

Not every word of this passage can be taken as law in India at the present time, but it is a useful exposition of the reason which underlies the well known doctrine of estoppel which has been enacted for India in s. 116 of the Indian Evidence Act. It discloses also the answer given by English law to the objection (of which something was heard at their Lordships' bar) that an assignee being liable upon the covenants only by privity of estate cannot be made liable if the lessor has no estate: an objection which serves only to emphasise the importance of this estoppel.

Section 116 of the Indian Evidence Act is as follows:—

No tenant of immoveable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immoveable property; and no person who came upon any immoveable property by the licence of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such licence was given.

The defendant company contended before the High Court that the section only applies where it is shown that the landlord put the tenant into possession of the property, and that when a person already in possession of land becomes tenant to another there is no estoppel against his denying his lessor's title. The application of this doctrine to the facts of the present

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case was made by contending that the defendant company in 1914 had obtained possession from the Official Assignee under the *shebâits'* leases before they were given possession under the lease from the Raja. The High Court have not thought it probable that the Official Assignee would give possession before the assignment of 1917 was executed and it seems to their Lordships, as to the High Court, to be satisfactorily proved that the defendant company were first put into possession under the Raja's lease and in pursuance of the assignment of February 14, 1914. On this view the defendant company's construction of s. 116 is of no service to them. Their Lordships, however, cannot accept either the construction contended for or the defendant company's method of applying it. The section does not deal or profess to deal with all kinds of estoppel or occasions of estoppel which may arise between landlord and tenant. It deals with one cardinal and simple estoppel and states it first as applicable between landlord and tenant and then as between licensor and licensee, a distinction which corresponds to that between the parties to an action for rent and the parties to an action for use and occupation. Whether during the currency of a term the tenant, by attornment to A who claims to have the reversion, or the landlord by acceptance of rent from B who claims to be entitled to the term, is estopped from disputing the claim which he has once admitted are important questions, but they are instances of cases which are outside s. 116 altogether; and it may well be that as in English law the estoppel in such cases proceeds upon somewhat different grounds and is not wholly identical in character and in completeness with the case covered by the section. The section postulates that there is a tenancy still continuing, that it had its beginning at a given date from a given landlord. It provides that neither a tenant nor anyone claiming through a tenant shall be heard to deny that that particular landlord had at that date a title to the property. In the ordinary case of a lease intended as a present demise—which

is the case before the Board on this appeal—the section applies against the lessee, any assignee of the term and any sub-lessee or licensee. What all such persons are precluded from denying is that the lessor had a title at the date of the lease and there is no exception even for the case where the lease itself discloses the defect of title. The principle does not apply to disentitle a tenant to dispute the *derivative* title of one who claims to have since become entitled to the reversion, though in such cases there may be other grounds of estoppel, *e.g.*, by attornment, acceptance of rent, *etc.* In this sense it is true enough that the principle only applies to the title of the landlord who "let the tenant in" as distinct from any other person claiming to be reversioner. Nor does the principle apply to prevent a tenant from pleading that the title of the original lessor has since come to an end.

In the present case, therefore, the defendant company could not dispute that the Raja in 1912 had title to the property demised and this merely by reason of their position as assignees of the term. There is no ground whatever for the notion that Radha Ballabh did not get possession or never had more than what in English law was called an *interesse termini*. He entered under the lease and he and his assigns have occupied and paid rent under it for years. An inquiry whether the defendant company when they took their assignment in 1924 were or were not then in possession has in their Lordships' view no bearing whatever upon the application of s. 116 or on the rights of the parties. It is quite true that in this particular case the assignment by the lessee to the defendant company was part of a compromise to which the Raja was a party. But the defendant company took no new title from him: they took the title of his lessee: though the Raja as a party to the compromise was precluded from denying that the original term was now vested in them. "The tenancy" under s. 116 does not begin afresh every time the

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interest of the tenant or of the landlord devolves upon a new individual by succession or assignment. In India, where tenants may have occupancy right and permanent or unlimited tenures are well known, the application of s. 116 may not always be clear; but the present case raises no difficulty, and there being no dispute as to the plaintiff's derivative title it seems profitless to inquire into the position as at 1914 when the landlord was not purporting to pass any title.

Further their Lordships cannot accept the construction of s. 116 for which the defendant company contended. There is in English case-law some authority for the view that a tenant is only estopped from denying his landlord's title if at the time when he took his lease he was not already in possession of the land. But in s. 116 the Indian legislature has formulated no such condition. The words "at the beginning of the tenancy" give no ground for it. When a demise of land is made and acted on, when the tenant proceeds to occupy and enjoy under the grant, gets the shelter of the grantor's title and the benefit of his covenants, it is difficult to see why "during the continuance of the tenancy" he should be free of this form of estoppel. "Tenant who has occupied but not entered" is a difficult notion to thrust into s. 116 and quite impossible to find therein. *Cuthbertson* v. *Irving* (*supra*) was the common case of a tenant who on the expiry of one lease took a new lease from his former landlord's vendee. In *Claridge* v. *Mackenzie* (1) it was suggested that the test should in such a case be whether the new lessor could have refused to let the tenant continue in possession, but this is to beg the very question of title. Stress has often been laid on the fact of the landlord having let the tenant in. Where that is clear, as it is in most cases, it is a pointed way of stating what the tenant has gained by taking title

(1) (1842) 4 Man. & G. 143 ; 134 E. R. 59.

under his lessor. It also points firmly to the fact of a new tenancy beginning at that time. In this sense may be understood the language of Sir George Farwell delivering the judgment of the Board in *Bilas Kunwar* v. *Desraj Ranjit Singh* (1). On the other hand, in *Vertannes* v. *Robinson* (2), the Board applied s. 116 to a case in which it was difficult to say that the tenant had obtained possession from the landlord. Of the Indian cases, *Lal Mahomed* v. *Kallanus* (3) and *Ketu Das* v. *Surendra Nath Sinha* (4) have sometimes been taken as establishing the doctrine now advanced by the defendant company, but both cases are really outside s. 116, not being concerned with title at the beginning of the tenancy, but with the common case of a sitting tenant attorning to a new individual as entitled to receive rent. It is important to notice in such cases that neither a new tenant nor a new *kabuliyat* necessarily implies a new tenancy.

The defendants Nos. 2 and 2 (*a*), who under s. 20 of the Public Demands Recovery Act of 1913 have been invested with "the right, title and interest" of the defendant company at August 17, 1927, may or may not be liable on the covenant for royalties in respect of coal raised (if any) between that date and 17th October of that year (end of *Ashwin*, 1334, Bengali style) which is the date up to which the plaintiff claims by his plaint. The claim is of small importance and is not pressed by the plaintiff. Their Lordships will therefore modify the High Court's decree which treats these defendants as liable for the whole claim. The decree will be varied by restricting it, in so far as it is a decree for money, to the defendant company who if held liable at all do not resist liability for whatever coal they raised. But it is clear that the right which the other defendants have obtained by the certificate-sale is subject to the

(1) (1915) I. L. R. 37 All. 557; L. R. 42 I. A. 202.
(2) (1927) I. L. R. 5 Ran. 427; L. R. 54 I. A. 276.
(3) (1885) I. L. R. 11 Cal. 519.
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plaintiff's charge upon the colliery and plant for the royalties claimed in the suit. It is therefore unnecessary to interfere with that part of the High Court's decree which enforces the charge.

The appeals before their Lordships have been consolidated but they are three in number. On the appeal by the plaintiff their Lordships have not entered into the question whether he or the Raja have or had title to *mouzâ* Manoharbahal and make no pronouncement upon it, as in their view the defendants were not entitled to raise it. The appeal, however, must fail as no complaint can be made of the decree. The appeal by the defendant company fails for the reasons above stated. The appeal by defendants Nos. 2 and 2 (*a*) succeeds on the question of their personal liability for the royalties, but the mistake in the High Court's decree is due, in their Lordships' opinion, to these defendants not having drawn attention to the matter at the proper time, and the plaintiff has not resisted the correction of the mistake.

The liability under the first operative clause of the decree will be confined to the defendant company. Subject thereto their Lordships will humbly advise His Majesty that all the appeals should be dismissed. They make no order as to the costs of the appeals.

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Solicitor for Baraboni Coal Concern, Ltd.: *Oswald Hickson Collier & Co.*

Solicitor for Chandanmull: *R. S. M. Calder.*

C. S.