

PRIVY COUNCIL.

PROBODH KUMAR DAS

v.

DANTMARA TEA CO., LTD.

P. C.*
1939July, 17, 18;
Oct. 10.

[ON APPEAL FROM THE HIGH COURT AT CALCUTTA.]

Transfer of property—Part performance—Transferee in possession under unregistered deed—Subsequent transfer by transferor to another by registered deed—Suit by first transferee against second for declaration of title—Right of action—Transfer of Property Act (IV of 1882), s. 53A—Effect of amendment by Act XX of 1929.

The plaintiffs, who were in possession of an estate under unregistered documents, sued the defendants, who had subsequently obtained a duly registered assignment of the estate in their favour, and the transferor for a declaration that they had no right or title to the estate and were debarred from enforcing any right.

Held that they had no right of action.

The amendment of the law effected by the enactment of s. 53A of the Transfer of Property Act conferred no right of action on a transferee in possession under an unregistered contract of sale. The right conferred by s. 53A is a right available only to a defendant to protect his possession. The section is so framed as to impose a statutory bar on the transferor; it confers no active title on the transferee.

Pir Baksh v. Mahomed Tahar (1) referred to.

Judgment of the High Court affirmed.

APPEAL (No. 86 of 1938) from a judgment and three resulting decrees of the High Court (August 18, 1936) which reversed a judgment and decree of the Second Additional Subordinate Judge of Chittagong (January 31, 1935).

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

Sir Thomas Strangman, K. C., and *Bagram* for the appellants: The suit was instituted to prevent the defendants from acting inconsistently with the first plaintiff's rights under the agreement with him. I submit that *Pir Baksh v. Mahomed Tahar* (1) does

*Present: Lord Macmillan, Sir George Rankin and Mr. M. R. Jayakar.

not support the contention that s. 53A was intended merely as a shield. The question is what is the import of the words "debarred from enforcing a right." If the transferor is debarred from enforcing a right, there is a statutory duty cast on him not to enforce that right. The transferee can seek to restrain him by injunction from doing anything which would be an evasion of his statutory duty.

Dunne, K. C., and *Pringle* for the first respondent and *Pugh* and *Pringle* for the seventh respondent were not called on.

The judgment of their Lordships was 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 October 10, 1931, by an interchange of letters of offer and acceptance agreed to sell the estate to one S. N. Ray, 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

1939

*Prabodh
Kumar Das
v.
Dantmara
Tea Co., Ltd.*

1939

*Probodh
Kumar Das
v.
Dantmara
Tea Co., Ltd.*

necessary to refer, claim on the other hand to be the proprietors of the estate under (i) a duly registered deed of assignment in their favour by the partners of Messrs. Gillanders, Arbuthnot & Co., dated June 1, 1934, which narrates *inter alia* the failure of S. N. Ray to complete the contract of sale of October 10, 1931, and (ii) a duly registered deed of sale, also dated June 1, 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 October 10, 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 s. 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 right for the Kaiyacherra estate to the plaintiffs or to them and S. N. Ray. 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.

1939
*Prabodh
Kumar Das*
v.
*Dantmara
Tea Co., Ltd.*

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 s. 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 October 10, 1931, and notwithstanding that they had taken no steps to complete their title, they were nevertheless entitled under s. 53A actively to assert the rights of a proprietor in virtue of the contract of October 10, 1931, and their possession.

The position of the law under the Transfer of Property Act, 1882, before the addition to it of s. 53A, has on more than one occasion been expounded by their Lordships and reference may be made to the case of *Pir Bakhsh v. Mahamed Tahar* (1), where the subject was fully discussed. It is clear that the appellants were well-advised in conceding that if they could not invoke s. 53A they were out of Court.

(1) (1934) I. L. R. 58 Bom. 650; L. R. 61 I. A. 388.

1939

*Prabodh
Kumar Das*
v.
*Dantmara
Tea Co., Ltd.*

In their Lordships' opinion the amendment of the law effected by the enactment of s. 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 Mitter J. in the High Court that "the right conferred by s. 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.

Solicitors for appellants: *Callingham, Ormond & Maddox.*

Solicitors for respondents Nos. 1 and 7: *T. L. Wilson & Co.*

c. s.