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We allow the appeal, reverse the decree of the lower appellate Court and pass a decree for possession in favour of the plaintiffs, the heir of defendant No. 14, and defendant No. 15 against the other defendants. Plaintiffs should get their costs throughout from defendants other than the heir of defendant No. 14 and defendant No. 15. The heir of defendant No. 14 and defendant No. 15 should bear their own costs throughout.

We make no order as to mesne profits prior to this date under the circumstances of this case. This is rather a hard case for the alienees and we think that the justice of the case will be met by allowing mesne profits from the date of this decree until the delivery of possession or the expiration of three years whichever event first occurs.

Mesne profits to be determined by the trial Court under Order XX, Rule 12.

Decree reversed.

J. G. R.

APPELLATE CIVIL.

*Before Sir Lallubhai Shah, Kt., Acting Chief Justice,
and Mr. Justice Kincaid.*

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August 26.

BHAGWANDAS RANGILDAS (ORIGINAL PLAINTIFF), APPELLANT v. THE SECRETARY OF STATE FOR INDIA IN COUNCIL (ORIGINAL DEFENDANT), RESPONDENT².

Indian Forest Act (VI of 1878), section 84—Indian Contract Act (IX of 1872), sections 74, 75—Recovery of penalty due under a forest contract—Rescission of contract—Compensation.

Section 84 of the Indian Forest Act (VII of 1878) applies to a particular penalty provided in the contract for a breach of a condition as to the contractor performing or abstaining from any act, and cannot be applied generally to all the consequences of a rescission of the contract under the terms thereof. The proper measure of compensation, if any, payable in such a case must be

² First Appeal No. 98 of 1922.

determined in accordance with the provisions of sections 74 and 75 of the Indian Contract Act (IX of 1872).

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APPEAL from the decision of N. B. Deshmukh, Assistant Judge of Khandesh.

The facts appear from the judgment.

Pendse, with *V. D. Limaye*, for the appellant.

S. S. Patkar, Government Pleader, for the respondent.

SHAH, AG. C. J. :—The few facts, which are really not in dispute, relating to this appeal are these. On August 26, 1918, the present plaintiff entered into a contract with the Secretary of State for India in Council for the felling and removal and purchase of timber, firewood and other things specified in item (a) of the Schedule annexed to the contract from the portion of the reserved forest in the Taloda range of the North Khandesh Division, which is known as Coupe No. 14 of 1918-19 of Block II.

The conditions of this agreement are set forth in detail in Exhibit 14. Under condition I (a) the plaintiff was to pay the sum of Rs. 5,325 in the following 4 instalments :—

- Rs. 1,332 on 30th August 1918.
- „ 1,331 on 1st December 1918.
- „ 1,331 on 1st January 1919.
- „ 1,331 on 1st February 1919.

He was at liberty under this contract to cut certain trees and remove them, subject to the conditions as to passes being given by the Forest Department, except certain trees, which are described as “reserved trees” in the Schedule to the contract. He deposited Rs. 540 as security for the due performance of the contract. In the beginning of this contract it is provided as follows :—

“The contractor, and each of his servants and agents will abstain from every act expressed in the conditions contained as to the abstaining from, and

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the contractor does hereby agree, in case of any breach of such conditions, to pay the Secretary of State through the Divisional Forest Officer on demand made in such behalf by him the sum of Rs. 100, or such smaller sum as may in each case be determined by the Divisional Forest Officer, in default whereof the whole of the said sum of Rs. 100 will in accordance with section 84 of the said Act (Forest Act VII of 1878, as amended by Act I of 1918) be recoverable from him as an arrear of land revenue."

Under condition II (*d*) he was required to abstain from felling certain trees.

In condition III, clause (*j*) it is provided as follows :—

"The contractor, further, in addition to the conditions hereinbefore contained on each breach of any of which the sum of one hundred rupees aforesaid is to be paid, agrees to the following conditions; that is to say: (*j*) The Divisional Forest Officer, in case of any breach of any condition hereinbefore contained may, in lieu of or in addition to requiring the payment of or recovering any sum payable in case of such breach, by a notice in writing upon the contractor, or, where there is more than one contractor, upon any of them, on behalf of them all, suspend the operation of the agreement pending the decision of the Conservator of Forests."

Under clause (*k*) of that condition the Conservator of Forests had power to put an end to the agreement in case of failure to fulfil any of the conditions of the contract.

In clause (*l*) of the same condition it is provided, among other things, that :—

"The money which may have been paid to Government under this agreement, and the entire stock of timber, firewood and other things in the coupe or at the depot aforesaid at the time at which the operation of the agreement was suspended by the Divisional Forest Officer, shall be and remain the property of Government, and shall be disposed of for the benefit of Government in such manner as the Conservator of Forests directs."

It appears that this contract was signed on October 29, 1918, but the contract has been treated as a contract of August 26, 1918. The plaintiff took possession of the particular coupe on November 30, 1918, and within the first few days of his operations, it appeared that he was cutting some of the reserved

trees. Therefore on December 10, the Ranger ordered the plaintiff orally to stop the cutting operations; and on December 16, 1918, the Divisional Forest Officer by his order, Exhibit 43, suspended the operation of the contract until the final decision of the matter by the Conservator of Forests. He took this action under clause (j) of condition III of the contract. Ultimately on April 28, 1919, the plaintiff received a notice from the Conservator of Forests under which the contract was rescinded, and certain consequences were stated as having resulted from the breach of the condition as to his abstaining from cutting reserved trees under the contract. In substance under that notice the Conservator of Forests claimed the deposit money, and the timber, firewood and other things in the coupe at the time at which the operation of the agreement was suspended by the Divisional Forest Officer, and also the sum of Rs. 100 claimable in respect of the breach of the condition as to not cutting reserved trees. A further notice was given on May 7, 1919; and again on May 21, 1919, the contractor was called upon to pay the remaining three instalments. These sums amounting to Rs. 3,993 were recovered as land revenue from the plaintiff in May 1919; but subsequently in January 1920 Rs. 2,662 were refunded to him.

The plaintiff filed the present suit on April 7, 1920, in which he claimed, on the footing of a breach of contract by Government, Rs. 3,000 as damages and Rs. 3,656 as per particulars shown in para. 5 of the plaint.

The defence was that there was a breach on the part of the plaintiff, that the contract was rightly rescinded, that under clause (l) of condition III of the contract, the Government were entitled to retain the two instalments, one of which had been paid in fact and the other

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became payable before the date of the suspension of the operation of the contract, and that the plaintiff was not entitled to any damages.

The first question in the suit was whether the plaintiff had broken the contract and whether the rescission of the contract by the Forest Department was justified. [After discussing the merits of the case and agreeing with the conclusion arrived at by the trial Court that the plaintiff had in fact committed a breach and the Conservator of Forests was entitled to rescind the contract, the judgment proceeded :—]

The question then arises as to what is the measure of damages or compensation to which the defendant is entitled. As the defendant was entitled to rescind the contract, it is clear that the plaintiff is not entitled to any damages on the footing of a breach by the defendant as claimed by him. In fact the defendant has recovered from the plaintiff the first and the second instalments, i.e., Rs. 2,663, and Rs. 100 as penalty for the breach of the condition under the terms of the contract, and Rs. 540 deposited by the plaintiff have been forfeited, and the stock lying on the land has also been forfeited. It is urged on behalf of the defendant that he is entitled to claim all this under clause (l) of condition III of the contract.

On the other hand, on behalf of the plaintiff it is urged that the defendant would be entitled only to reasonable compensation, not exceeding the amount named in the contract, under section 74 of the Indian Contract Act, or to compensation for any damage which he has sustained through the non-fulfilment of the contract under section 75.

As against this it is urged that under section 84 of the Indian Forest Act, in spite of the provisions of section 74 of the Indian Contract Act, the defendant is

entitled to the full benefit of the provisions of clause (l) of paragraph III of the contract agreed to by the plaintiff under the contract.

The first question, therefore, to be considered is how far section 84 is applicable to the case in determining the amount of compensation to be awarded to the defendant for the breach on the part of the plaintiff. Section 84 of the Indian Forest Act VII of 1878, as amended by Act I of 1918, is in these terms :—

“ When any person, in accordance with any provision of this Act or in compliance with any rule made thereunder, binds himself by any bond or instrument to perform any duty or act, or covenants by any bond or instrument that he, or that he and his servants and agents, will abstain from any act, the whole sum mentioned in such bond or instrument as the amount to be paid in case of a breach of the conditions thereof may, notwithstanding anything in section 74 of the Indian Contract Act, 1872, be recovered from him in case of such breach as if it were an arrear of land revenue.”

The contract provides that the plaintiff and his servants and agents will abstain from cutting the reserved trees, and the penalty provided for a breach of this condition is Rs. 100. It is quite clear that to that provision in the contract section 84 of the Forest Act would apply.

But it is further contended on behalf of the respondent that section 84 of the Indian Forest Act really applies to the whole contract, and when the contract was rescinded on account of a breach of this condition, the penalty provided in clause (l) of paragraph III of the contract became recoverable under section 84, in spite of the provisions of section 74 of the Indian Contract Act.

Having regard to the terms of the contract, as also to the terms of section 84 of the Indian Forest Act, we are unable to accept the contention that section 84 applies to clause (l) in the contract, or applies generally to the determination of compensation to be awarded to a

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party rightly rescinding the contract as damages for non-fulfilment of the contract. The terms of section 84 of the Indian Forest Act are very specific, and there is clear provision for the application of this section in the terms of the contract itself. Section 84 applies to a particular penalty provided in the contract for a breach of the condition as to the contractor abstaining from any act; and it cannot be applied generally to all the consequences of a rescission of the contract under the terms of the contract. We do not think that clause (1) can be read as mentioning the amount to be paid in case of a breach of a condition which requires the plaintiff and his servants and agents to abstain from any act.

We have, therefore, to determine under section 74 and section 75 of the Indian Contract Act, as to what is the proper measure of compensation under the circumstances. It is conceded before us, and quite properly, by the learned Government Pleader on behalf of the respondent that the exception to section 74 does not apply to this case.

As to the compensation to be awarded under the circumstances of the case, it seems to us that the defendant is fairly entitled to the benefit of the deposit money Rs. 540, as also to the sum of Rs. 100 recovered as penalty under section 84 of the Indian Forest Act for breach of the condition as provided under the contract. The defendant is also entitled under the circumstances to retain the benefit of all the stock that was there at the date when the operation of the contract was suspended.

The question as to whether the defendant is entitled to any further compensation is not easy, and the evidence in the case does not afford any indication as to what it should be. Having regard to all the circumstances of the case, we think that it would be fair to

allow the defendant to retain the amount of the first instalment paid in September 1918. We think, however, that the amount recovered in respect of the second instalment should be paid back to the plaintiff.

Even apart from our determining the amount of compensation under sections 74 and 75 of the Indian Contract Act, if we were to interpret clause (b) of paragraph III of the contract we are not sure that the amount recovered as land revenue in May 1919 is amount paid within the meaning of that clause. That clause refers really to money which may have been paid to Government under the agreement, and not to money recovered as land revenue.

However that may be, the basis of our decision is that section 84 does not apply generally to all the consequences of a breach on the part of the plaintiff, but only to a particular penalty provided for a breach of the condition as to the plaintiff performing any duty or act or abstaining from a particular act, and that we have to determine the compensation to be given to the defendant for non-fulfilment of this contract by the plaintiff.

The result, therefore, is that we vary the decree of the lower Court by allowing to the plaintiff Rs. 1,331, with interest from the date of the recovery of this amount up to the date of payment at 6 per cent. in addition to the amount of Rs. 101-2-6 already awarded by the lower Court.

Having regard to all the circumstances including the fact that according to our view the recovery of the remaining instalments as arrears of land revenue under section 84 could not be justified, we direct that each party should bear his own costs throughout.

Decree varied.

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