

the difference between the contract price of the goods despatched from the mill and the price at which they were resold; the plaintiffs are also entitled to demurrage claimed and proved in respect of those goods.

Attorneys for the plaintiffs: Messrs. Morgan & Co.

Attorneys for the defendant: Messrs. Watkins & Co.

S. C. B.

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CLIVE JUTE  
MILLS Co.  
v.  
EBRAHIM  
ARAB.

Before Mr. Justice Ameer Ali.

HARENDRA LALL ROY v. SARVAMANGALA DABEE AND OTHERS.\* 1896  
*Transfer of Civil Case—Letters Patent, High Court, 1865, clause 13—Grounds for Transfer—Practice.* January 17-

In a suit for immoveable property instituted in the Dinagepur Court, the defendant applied for its transfer to the High Court under clause 13 of the Letters Patent, the grounds upon which the transfer was asked for being, that questions of difficulty arose in the suit; that the defendants' witnesses lived in Calcutta; that it would be impossible for her to go to Dinagepur and take her witnesses there owing to the expense; that an agreement upon which the suit was brought was executed in Calcutta; that the plaintiff resided and carried on business in Calcutta; and that all the persons who knew of the transactions in suit were residents of Calcutta or its neighbourhood. *Held*, under the circumstances, that the case was a proper one to be transferred to the High Court.

THE facts of this case are fully stated in the judgment.

The *Advocate-General* (Sir Charles Paul) who appeared with Mr. O'Kinealy to show cause against the rule, cited the following cases: *Mokham Singh v. Rup Singh* (1), *Khatija Bibi v. Taruk Chunder Dutt* (2), *Ojooderam Khan v. Nobinmoney Dossee* (3), *Doucett v. Wise* (4), and *Courjon v. Courjon* (5).

Mr. Garth in support of the rule cited the following cases: *Jotindro Nath Mitter v. Raj Kristo Mitter* (6), *In the matter of Kapil Nauth Sahai Deo v. Government* (7), *Ram Oommar*

\* Rule calling upon the plaintiff in suit No. 957 of 1895 in the Court of the Subordinate Judge of Dinagepur to show cause why the said suit should not be removed to the High Court.

- (1) I. L. R., 15 All., 352; L. R., 20 I. A., 127. (2) I. L. R., 9 Calc., 980  
(3) 1 Ind. Jur. N. S., 396. (4) 1 Ind. Jur. N. S., 94, 227.  
(5) 9 B. L. R., Ap. 10. (6) I. L. R., 16 Calc., 771.  
(7) 10 B. L. R., 168.

1896 *Coondoo v. Ohunder Canto Mookerjee* (1), *Poolin Chunder Chowdhri v. Satish Chunder Shaw* (2), and *Jogendro Nauth Chatterji v. Anundo Ohunder Banerjee* (3).

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AMEER ALL, J.—This rule was obtained by Sreemutty Sarva-mangala Dabee, one of the defendants in a suit No. 957 of 1895 in the Court of the Subordinate Judge of Dinagepur, under clause 13 of the Letters Patent, calling upon the plaintiff Harendra Lall Roy to show cause why the said suit should not be removed to this Court, to be tried and determined in this Court in the exercise of its extraordinary original civil jurisdiction. The circumstances under which the suit in question was instituted are shortly these :—

One Sreenath Sanyal died on the 20th May 1892, leaving considerable property, both moveable and immoveable. The immoveable property is situated partly in the District of Dinagepur and partly in the District of Burdwan, the bulk being in Dinagepur. The moveable property consists of a sum of Rs. 3,00,000 in the hands of the Accountant General of this Court, and the accumulated rents of the zemindaries at Dinagepur, amounting to a large sum in the hands of the Collector of Dinagepur.

Upon the death of Sreenath Sanyal three claimants appeared on the scene, each claiming to be solely entitled to the estate, one of them being Woodoy Churn Sanyal, who claimed as the adopted son of Sitanath Sanyal, one of Sreenath Sanyal's brothers. The second claimed to be the adopted son of another brother, and the third as next-of-kin.

A suit was instituted in the Burdwan Court, and proceedings were taken in this Court for Letters of Administration to the estate of Sreenath Sanyal. Woodoy Churn Sanyal seems to have been a man of no means, and after some ineffectual attempts to obtain money from other sources he entered into an agreement with Harendra Lall Roy, the plaintiff, under which, in consideration of the plaintiff advancing funds for the prosecution of his claim to the estate of Sreenath Sanyal, Woodoy purported to assign half his interest to Harendra Lall Roy.

(1) I. L. R., 7 Cal., 233 (256) ; L. R., 4 I. A., 23 (47).

(2) Unreported : Minute Book, 5 Sept. 1895, Sale J.

(3) Unreported : Minute Book, 23 April 1894, Sale J.

That agreement, or as it is called deed of assignment, bears date the 27th of September 1892. On the 6th of September 1894 a compromise took place between the three claimants, by which Woodoy Churn Sanyal obtained five annas, Rajendra Nath Sanyal eight annas, and Eshan Chunder Sanyal three annas, and a decree was made by consent in those terms in the Burdwan Court; and upon the basis of that compromise I am informed an order was made in this Court declaring the rights of Rajendra Nath Sanyal, Woodoy Churn Sanyal, and Eshan Chunder Sanyal, according to the shares mentioned, and directing that Letters of Administration should issue jointly to them. But from the proceedings before me it appears that Letters of Administration have not yet been issued.

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Woodoy Churn Sanyal died on the 2nd April 1895. The defendant Sreemutty Sarvamangala Dabee is his daughter, and it is said that for two or three months she received the allowance which Harendra Lall Roy was making to her father under the deed of assignment. That is a question, however, with which I am not concerned in the present matter.

Some time after his death the defendant Sarvamangala Dabee raised questions regarding the validity of the deed of assignment executed by her father in favour of Harendra Lall Roy. There appears to have been the usual correspondence between the attorneys on both sides, and on the 27th of August 1895, the plaintiff instituted this suit in the Dinagepur Subordinate Judge's Court, praying, among other things, for a declaration that under the conveyance of the 27th of September 1892, and another agreement referred to in the plaint, he was entitled to a moiety of the share of Woodoy Churn Sanyal in the estate of Sreemath Sanyal. He asked further that possession might be given to him of that moiety, and also that the defendants other than the Collector of Dinagepur be restrained from handing over to the defendant Sreemutty Sarvamangala Dabee any portion of the said share of Woodoy Churn Sanyal in the estate of Sreemath Sanyal, and that she might be restrained from receiving, getting in, or dealing with the same. The plaintiff prayed also for the appointment of a Receiver, and other reliefs to which I do not consider it necessary to refer. It appears that on the same day the plaintiff

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obtained a rule calling upon the defendant to show cause why a Receiver should not be appointed in respect of the moneys in the hands of the Accountant-General of this Court, and also of the zemindari in the district of Dinagepur which were in the hands of the Collector, and obtained in the meantime an interim injunction. On the 22nd November the defendant Sreemutty Sarvamangala Dabee applied for and obtained this rule, the purport of which I have already given.

The Advocate-General and Mr. O'Kinealy have shown cause. The plaintiff himself has filed no affidavit of his own. Two affidavits have been used on his behalf, one made by his attorney Kamini Kumar Guha jointly with Horo Coomar Chuckerbutty, Kamini Kumar's clerk, the other by Raj Chunder Bose, a gomastha of the plaintiff.

Now, clause 13 of the Letters Patent runs thus: "And we do further ordain that the said High Court of Judicature at Fort William in Bengal, shall have power to remove and to try and determine, as a Court of Extraordinary Original Jurisdiction, any suit being or falling within the jurisdiction of any Court whether within or without the Bengal Division of the Presidency of Fort William, subject to its superintendence, when the said High Court shall think proper to do so, either on the agreement of the parties to that effect, or for purposes of justice, the reasons for so doing being recorded on the proceedings of the said High Court."

A number of cases dealt with under the clause were cited in the course of argument. I have also referred to a case decided in 1866—*Ojooderam Khan v. Nobinmoney Dossee* (1).

There can be no doubt that this Court has ample power to remove cases from any Court subject to its superintendence for trial, in the exercise of its extraordinary jurisdiction, whenever it thinks fit to do so for purposes of justice; that purpose is to be determined on various considerations, most of which are discussed in the cases to which reference has been made. For example, the desirability or necessity to exercise the jurisdiction may arise in consequence of the importance or difficulty of the questions involved, or it may arise in consequence of the balance of convenience.

(1) 1 Ind. Jur. N. S. 396.

or cheapness of the trial. I do not mean to say that these considerations are exhaustive for the exercise of the jurisdiction under clause 13, but these are circumstances under which undoubtedly this Court has exercised the power. In the matter of *Kapil Nath Sahai Deo v. The Government* (1), the conduct of the Judge was taken into consideration in directing a transfer.

The grounds which the defendant puts forward in asking for a transfer may be stated shortly to be as follows :—

1. She contends that the questions involved in the suit are of a difficult and important character.

2. She suggests that the witnesses whom she intends to cite live in Calcutta, and that it would be an extreme hardship to her either to go herself or take her witnesses to Dinagapur to be examined at the trial.

I am giving very briefly the grounds which were discussed before me, as they are set out fully in the affidavit of the defendant. It is quite clear that the agreement upon which the suit is brought was executed in Calcutta. It is also evident that the plaintiff resides and carries on business in Calcutta. In the 32nd paragraph of the defendant's verified petition it is stated that the said Harendra Lall Roy is a rich money-lender of Hatkhola, having extensive business connections in the mofussil. There is no contradiction of that statement in the affidavits which have been filed on his behalf. Then in the 34th paragraph it is said : "All the persons who know of the transactions between the said Woodoy Churn Sanyal and Harendra Lall Roy, and who will be likely to be called as witnesses by your petitioner, are residents of Calcutta or Bally and work in Calcutta." Again, there is no contradiction. The joint affidavit of Kamini Kumar Guha and Horo Coomar Chuckerbutty, so far as it goes, contradicts the defendant's statements regarding the circumstances under which the deed was executed, the capacity of Woodoy Churn Sanyal, and the knowledge of the defendant concerning the document, but I do not find any contradiction of the allegation that all the witnesses who are able to speak to the agreement are in Calcutta or in its neighbourhood. Nor is there any contradiction in Raj Chunder Bose's affidavit. The defendant says her evidence would be material,

(1) 10 B. L. R., 168.

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and that it would be impossible for her to go to Dinagepur and take her witnesses there, as the expense would be very heavy, and further that she would be unable to secure the attendance of many of them even if she could afford the expense.

There is no contradiction of the statement that she has not the means to afford the cost of a commission, nor any suggestion that she can conveniently go to Dinagepur to give her evidence. Considering the fact that the defendant is a *purdahnashin*, I can understand the difficulty of her going to Dinagepur for the purposes of giving her evidence. There is not the faintest allegation on the part of the plaintiff that there are any witnesses at Dinagepur whom he will be obliged to bring down to Calcutta if the case were tried here.

Kamini Kumar Guha suggests in a weak sort of way that the defendant has the means of taking up Counsel from here to Dinagepur. On this point he says as follows: "With reference to the statements contained in the 33rd paragraph of the said petition we say that we do not believe that the said petitioner is without means to take down Counsel from Calcutta to Dinagepur in case it were necessary to do so, which we do not believe it to be, &c."

The denial is of a weak character. I do not mean to say that inability on the part of the defendant to take Counsel up to Dinagepur would be any ground for a transfer; what I find is that though her inability to take up Counsel is denied in the way I have shown, her statement as to her want of means to go to Dinagepur or to take her witnesses there, is not denied.

Raj Chunder Bose says in substance that if the case be removed to this Court it would entail great hardship and loss on Harendra Lall Roy, who has already paid and incurred liabilities for stamps and pleader's fees to the amount of Rs. 4,500.

Beyond the matter of expense there is nothing to show what the hardship would be. I have nothing to do with the expense which the plaintiff has already incurred. If he wins—he will in all probability recover the costs of the stamps. It is said that the suit was brought in the Dinagepur Court, inasmuch as the Collector of that District has been made a defendant. But the Collector is merely a formal party; his presence in the suit is owing to the fact that he holds in his hands the rents of the estate. The

suit could have been brought in the Burdwan Court, where the former suit in respect of these very properties was instituted and which would have been more convenient to the parties and the witnesses in the case. I think there is a good deal of force in Mr. Garth's contention that the plaintiff has brought the suit in the most distant place he could in order to throw every difficulty in the way of the defendant to defend the action. I was surprised at the statement that the expense here will be greater than in the mofussil. This is obviously contrary to ordinary experience.

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The matter therefore substantially comes back to this: This is a suit for the enforcement of a contract between Harendra Lall Roy and Woodoy Churn Sanyal, by which the latter purported to assign a moiety of his share in the estate of Sreenath Sanyal to the plaintiff in consideration of being placed in funds for the prosecution of his claim. Having regard to the statements which the defendant makes various questions arise for determination, one of which is whether it was an extortionate or unconscionable bargain, assuming that it was entered into with full apprehension of its effect and purport, I do not wish to say more on this particular question than is absolutely necessary, but bearing in mind the decisions in the cases of *Ram Coomar Coondoo v. Ghunder Canto Mookerjee* (1), *Raghnath v. Nil Kanth* (2), and *Mokham Singh v. Rup Singh* (3), it is clear that the question is important and difficult. Had that ground stood alone, I am not prepared to say the Court of the Subordinate Judge would not be quite competent to deal with it. But there are other circumstances which I must take into consideration. All the parties really interested in the suit reside either in Calcutta or in its immediate neighbourhood. So, upon the affidavits, do the witnesses who are likely to attend to give their testimony. It is not suggested that any of the witnesses for the plaintiff are at Dinagepur. Again, if the agreement cannot be supported in its entirety the plaintiff may only be entitled to so much as he has spent, and an account would be necessary. It is not suggested that

(1) I. L. R. 2 Calc., 233; L. R., 4 I. A., 47.

(2) I. L. R., 20 Calc., 843; L. R., 20 I. A., 112.

(3) I. L. R., 15 All., 352; L. R., 20 I. A., 127.

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his accounts are at Dinagepur. The money was advanced here and the books are here.

The defendant states it would be extremely difficult for her to go to Dinagepur. She states she has no means to go herself or to take her witnesses. Again, the prayers for an injunction and receiver render the case one eminently fit to be tried in this Court. The balance of convenience is manifestly in favour of its being heard in Calcutta. To insist upon its being tried in Dinagepur would, in my opinion, place insuperable difficulties in the way of the defendant to defend the suit.

The other defendants leave the matter in the hands of the Court. For all the reasons I have given I think I ought to make the rule absolute, which I accordingly do. I reserve the costs of all parties.

Attorneys for the plaintiff: Messrs. *Sen and Co.*

Attorney for the defendant Sarvamangala Dabee: Babu *Bhupendra Nath Bose.*

Attorney for the defendant Eshan Chunder Sanyal: Babu *Mohini Mohan Chatterji.*

Attorney for the defendant Rajendro Nath Sanyal: Mr. *A. H. Gillanders.*

F. K. D.

*Rule absolute.*

*Before Mr. Justice Sale.*

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January 4.

KISSORY MOHUN ROY v. KALI CHURN GHOSE AND OTHERS.\*

*Execution of decree—Mode of execution—Mortgage—Subsequent mortgages—Execution against properties outside the local jurisdiction of the High Court—Leave to sue—Letters Patent, High Court 1865, clause 12—Application of restrictive words of that clause.*

Properties within Calcutta were mortgaged to the plaintiff, and these properties together with other properties out of Calcutta were mortgaged to a second mortgagee. In a suit against the mortgagor and the second mortgagee it was held that after the usual mortgage decree was made, the second mortgagee had the right to proceed against the properties out of Calcutta for the realization of any balance of the mortgage money that might remain due to him.

\* Original Civil Suit No. 596 of 1893.