Privy Council Appeal No. 53 *of* 1914.

Bengal Appeal No. 32 *of* 1912.

Tricomdas Cooverji Bhoja - - - - *Appellant,*

v.

Sri Sri Gopinath Jiu Thakur - - - *Respondent,*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 20TH DECEMBER, 1916.

Present at the Hearing:

LORD PARKER OF WADDINGTON.
LORD SUMNER.
SIR JOHN EDGE.
SIR LAWRENCE JENKINS.

[*Delivered by* LORD SUMNER.]

In this case an idol, by his Paricharaks and Shebaits, sued to recover mining royalties under a lease of his colliery property in Burdwan. The Shebaits, who made the agreement in suit, were four brothers, and the property was the ijmali debottar property of their family deity. Owing to some quarrel the collection of rents was not always joint and, at the time when the principal defendant was making default in paying the royalties, one of the brothers obtained from him payment of 4,000 rupees on account of his share, on the terms that, if his co-sharers did not agree to give up their claim to interest and be content with like sums, he was to be paid by the principal defendant in the same proportion as the co-sharers might be paid. This brother was accordingly unwilling to join as a plaintiff in bringing the suit and so was joined as a second defendant. As such he appended to his defence a claim against the first defendant to recover *pari passu* with the plaintiffs, after giving credit for the 4,000 rupees already paid, in case they should make out their claim. This was, of course, quite irregular in point of pleading, and gives rise to a technical question of minor importance. The suit was begun more than three and less than six years after the cause of action accrued, and the main question is whether or not the whole claim is Statute-barred.

The lease was effected by a mokurari kabuliyat and a

pottah expressed in similar terms. The first defendant agreed that if he failed to cut any coal at all, he would pay a minimum royalty of 4,000 rupees per annum. It is certain that he cut no coal: whether or not he even entered or took possession is not so clear. The sum to be paid per maund of coal gotten is called "commission" and not "rent," but the right acquired by the principal defendant is described as a "settlement." The kabuliyat runs—

> "On a proposal being made to take a settlement of the rights of "your family deity in this mouzah for the purpose of raising coal from "below the surface of the said mouzah by making pits, you, for the "benefit of your family god, and with the object of increasing the "income of the debottar property, are making a settlement with me of "the right and interest in the said mouzah to the extent owned by "your family deity."

Their Lordships accordingly take it, as seems to have been done by the Courts below, that the minimum royalty sued for would be "rent" within article 110 of Act XV of 1877, which is the enactment applicable.

The kabuliyat sued on was a registered instrument and the question is whether the suit is one for arrears of rent, as the appellant lessee says, and so is barred by article 110, or whether, as the respondent lessors contend, it falls within article 116 as a suit for "compensation for breach of contract in writing registered," and thus was brought within time. The argument for the appellant is that the suit being for arrears of "rent" is in terms within article 110 and is not, truly speaking, a suit for compensation for breach of contract at all, since the lessee does not covenant to get coal but is at liberty, on paying the agreed minimum royalty, to let the coal alone, and commits no breach of contract if he chooses to do so.

The Limitation Act No. XIV of 1859 provided that the period of limitation applicable to "all suits for the rents of any buildings or lands" should be three years (§ 8); the period applicable to suits brought "for the breach of any contract" three years, unless in the case of a contract which could have been registered such registration had taken place within six months from the date of the contract (§ 10); and, thirdly, that the period applicable "to all suits for which no other limitation is herein expressly provided" should be six years. Act IX of 1871 repeals the Act of 1859, and adopts the present framework of a schedule subdivided into articles and columns. Schedule 2, Part VI, the part which comprises the cases to which the period applicable is three years, includes article 110 "for arrears of rent" and article 115 "for the breach of any contract, express or implied, not in writing registered and not herein specially provided for." Part VII, which included the cases to which the period applicable was to be six years, contained article 117—"on a promise or contract in writing registered." This Act in turn was repealed by Act XV of 1877, which re-enacted article 110 in the same terms, and article 115

almost in the same terms, viz., "for compensation for the breach of any contract, express or implied, not in writing registered and not herein specially provided for," and in Part VII substituted article 116 for article 117, thus, "for compensation for the breach of a contract in writing registered."

Both these Acts draw, as the Act of 1859 had drawn, a broad distinction between unregistered and registered instruments much to the advantage of the latter. The question eventually arose whether a suit for rent on a registered contract in writing came under the longer or the shorter period. On the one hand it has been contended that the provision as to rent is plain and unambiguous, and ought to be applied, and that in any case "compensation for the breach of a contract" points rather to a claim for unliquidated damages than to a claim for payment of a sum certain. On the other it has been pointed out that "compensation" is used in the Indian Contract Act in a very wide sense, and that the omission from article 116 of the words, which occur in article 115, "and not herein specially provided for," is critical. Article 116 is such a special provision, and is not limited, and therefore, especially in view of the distinction long established by these Acts in favour of registered instruments, it must prevail. There is a series of Indian decisions on the point, several of them in suits for rent, though most of them are in suits on bonds. They begin in 1880, and are to be found in all the Indian High Courts. In spite of some doubts once only was it held, in 1903 (26 All. 138), that in such a suit article 110 and not article 116 applied. Then in 1908, and in this state of the decisions, Act IX of 1908 replaced the Limitation Act of 1877 without altering the language or arrangement of the articles, and in 1913, in *Lalchand* v. *Narayan* (37 Bomb. 656), the High Court of Bombay held that, especially in view of this re-enactment, the current of decisions must be followed, and *Ram Narain's case* (26 All. 138) must be disapproved. In the present case the High Court treated the matter as settled law in the same sense.

Where the terms of a Statute or ordinance are clear their Lordships have decided that even a long and uniform course of judicial interpretation of it may be overruled, if it is contrary to the meaning of the enactment (*Pate* v. *Pate*, 1915, A.C. 1100). Such is not the case here. However arguable the construction of Act XV of 1877 may have been when the matter was one of first impression, it certainly cannot be said that the construction, for which the appellants argue, was ever clearly right. On the contrary, their Lordships accept the interpretation so often and so long put upon the Statute by the Courts in India, and think that the decisions cannot now be disturbed.

The question of limitation was not discussed at the trial. The principal defendant pleaded payment, made it his main case, failed in it, and now acquiesces in his failure. The decree

passed was for royalties up to a certain amount, and was in favour of the plaintiffs for three-fourths and of the second defendant for one-fourth, less credit for the sum admittedly received by him on account. In form this decree was erroneous, and this was admitted in the High Court. The point was doubtless not brought to the attention of the Trial Judge; otherwise the proceedings could readily have been put in proper form, all the more because the second defendant, though concluding his defence with a claim for a decree against his co-defendant, had previously pleaded that he was entitled to part of the entire arrears of royalties, the subject of the plaintiffs' claim, and had prayed "that this suit may be ordered to be prosecuted upon making this defendant a plaintiff." The High Court corrected the admitted error by making a decree for the entire amount in favour of the plaintiffs, and declaring that, as to a named part, it was for their share and as to the residue it was for the second defendant's share. The principal defendant by his appeal had brought the entire decree before the High Court, disputing it *in toto*. It was one decree, not two. The second defendant had not appealed. The now appellant argues that, for want of a separate appeal by the second defendant, the High Court had no jurisdiction to award to the plaintiffs for his benefit the sum which had been awarded to him directly by the Trial Judge. It was said that, as the second defendant, by not appealing, stood by the decree as made below, and as in that form it was wrong, he must lose his right altogether. It would be unjust if this were so. Nevertheless, if the appellant could have shown any provision of the Civil Procedure Code, or of any other enactment, which showed clearly that the High Court had no such power, the objection must have prevailed. No such provision was cited. The appellant himself had brought the entire decree of the Trial Judge before the High Court for review, and thus they were right in making the decree, which should have been made below, even though the second defendant had given no notice of appeal.

A point was also made that as to the royalty for one kist the claim was in any case Statute-barred and that the amount of the decree should be reduced accordingly. Their Lordships think that this point is not open to the appellant. There is no trace of its having been raised before either Court below. It does not appear in either the notice of appeal to the High Court or in the grounds for applying for leave to appeal to their Lordships' Board. If it is raised at all by the appellant, in the Reasons appended to his Case, it is raised only obscurely. It depends on the construction of the kabuliyat in a respect not submitted to either Court below, and their Lordships decline to entertain it.

Their Lordships will humbly advise His Majesty that this appeal should be dismissed with costs.

In the Privy Council.

TRICOMDAS COOVERJI BHOJA

v.

SRI SRI GOPINATH JIU THAKUR.

DELIVERED BY LORD SUMNER.

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