

**Sutherland Vs. Singhee Churn Dutt**

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**SooperKanoon Citation :** [sooperkanoon.com/861790](http://sooperkanoon.com/861790)

**Court :** Kolkata

**Decided On :** Jun-16-1884

**Reported in :** (1884)ILR10Cal808

**Judge :** Pigot, J.

**Appellant :** Sutherland

**Respondent :** Singhee Churn Dutt

**Judgement :**

**Pigot, J.**

1. The defendant seeks inspection of certain documents of the plaintiff, which plaintiff claims that he is entitled, under Section 135 of the Code, for the present to withhold.

2. This is a suit for specific performance in which several defences are set up: one, that no contract was ever entered into; another, that if such a contract was ever entered into, the defendant was induced to enter into it by the misrepresentation of the defendant.

3. The acts of misrepresentation alleged by the defendant are, perhaps, as to some of them, somewhat loosely indicated in the written statement. But as to one, which I must for the purpose of the present application at any rate treat as

material, it is clear enough.

4. The defendant alleges that the plaintiff represented to him before the negotiation, or the contract, whichever it was, was entered into, that the property to be sold was of the net annual value of Rs. 13,000. The defendant's case is, that this was a false representation, and that at the outside the net annual value was to plaintiff's knowledge very greatly below Rs. 13,000. Upon this question the parties are at issue.

5. Another question arises in the case with respect to the annual value of the property. In the letter of October 6th, which plaintiff alleges, and defendant denies, to have been a final agreement, it is recited that the plaintiff guarantees the net annual income to be not less than Rs. 13,000, and that if the annual income be less than Rs. 13,000, a proportionate reduction is to be made in the price.

6. The defendant alleges that the property offered to him was described to him as a zemindari, and that the net annual value meant the annual net rental derived therefrom over and above Government revenue, assessments and such like outgoings.

7. This the plaintiff denies, alleging that this stipulation referred to net annual income derived from all sources of income, including the income derived from certain mulberry cultivation carried on upon the estate; and also as I conclude the income derived from the indigo factory and silk filature on the property, that property being indeed described in the letter of October 6th, drawn up by the plaintiff's solicitor, and signed (though, as he alleges, not read) by the defendant, as the Ramnaghur Indigo Factory and Silk Filature.

8. The defendant in paragraph 21 of his written statement alleges that not merely did the property not yield the Rs. 13,000 net annual value in the sense attributed by him to those words, but that even as an indigo factory it had been carried on for years at a loss, as the plaintiff knew.

9. Those are the two chief points in dispute between the parties as to the question of greater or less money value, and the representation or guarantee said to have

been made or entered into respecting it.

10. Then, there is another dispute closely connected with the above, namely--what it was, which was offered to the defendant.

11. The defendant says what plaintiff offered him for sale was a zemindari with a profit rent; with, no doubt, a factory, etc., on it; combining this, with the previous contentions, he in result, alleges that he was offered, as a profitable zemindari, what was in truth a worthless trading concern.

12. The plaintiff says what he sold was an indigo factory, etc., with rent-paying tenants on the land; and that it was a valuable property. There are no doubt other questions raised in the suit, but I do not think I need advert to them for the purpose of the matter now before me.

13. The documents which the plaintiff claims to withhold from inspection are those set out in part III of the schedule to his affidavit, and consist of title-deeds evidencing his title to and the books of account, and other papers and documents relating to the indigo factory, silk filature, and other property in the agreement, dated the 6th October, mentioned.

14. He says the defendant is not entitled to inspect these documents until it shall have been decided in this suit whether or not the agreement sued on in the suit was or was not binding on the defendant. It was argued for the plaintiff that defendant would not be allowed to go into the question of title at the hearing; that the question at the hearing would be simply, was there a binding contract; and that upon that being found, if it should be found in favour of the plaintiff, the Court would direct the usual reference as to title, until which time, the right to inspect those documents would not arise, the issue upon which their contents would be material not arising until then.

15. If the matter stood solely on that footing, I should accept the plaintiff's contention and refuse the discovery sought. The case of the defendant is not so framed (I will put it no further) in respect of the mere question of title, as to lead to a departure from the usual, though not absolutely invariable, practice of directing a

reference.

16. But it is not upon a mere question of title that discovery of these documents is now sought. Upon one question, whether the contract, if made, is voidable on the ground of misrepresentation, they are or they probably are, or they may be, material to the defendant's case. So far as I can judge from the correspondence, I should think it probable that they are material. I do not like saying more than that; it is not the time to construe the letter of October 6th. But it is enough if they may reasonably be thought material to an issue which must be raised at the hearing.

17. It is obviously a case, which it is better not to discuss, at this stage, a jot more than is necessary; else there are one or two further considerations to which I might perhaps refer. I shall only add that I am glad to think that the burden of inconvenience here is lighter than in some cases which might be imagined in which inspection of the title-deeds might be ordered. The documents which the plaintiff seeks to withhold would have been, as I gather from the correspondence, always open to the defendant's inspection, had he paid his deposit; yet even then the present defence would have been available for him if his case be true, and he had paid the money before discovering the facts on which it is founded.

18. I feel the objection to ordering discovery of a party's title-deeds, when it can be avoided, that if I saw my way to it, I should let the questions of misrepresentation and the one or two other questions to which I have not particularly referred, stand over until the question of the effect of the signature by the defendant of the letter of October 6th could be determined. But I cannot do it. It would be perhaps to order two distinct trials followed by a reference as to title.

19. The plaintiff must give the discovery sought for, costs to be costs in the cause.

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