

Ananda Chandra Das Vs. Kali Das Bepari

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SooperKanoon Citation : sooperkanoon.com/876142

Court : Kolkata

Decided On : Feb-04-1919

Reported in : 51Ind.Cas.955

Judge : Teunon and ;Walmsley, JJ.

Appellant : Ananda Chandra Das

Respondent : Kali Das Bepari

Judgement :

Teunon, J.

1. This appeal arises out of a suit brought for the purpose of setting aside a kabuliyat executed by the plaintiff, who is the appellant before us, and a patta granted to him by the defendant-respondent. The defendant is an under-raiyat of what may be described as the first decree, while the plaintiff is a sub-tenant under him, or a sole under raiyat of the second degree. It appears that in the year 1911 they were engaged in litigation, in which the present defendant sought to eject the plaintiff from his holding. The present plaintiff's answer in that suit was that he had a permanent interest in his holding and could not be ejected. This litigation went through many Courts, its final stage being a Letters Patent Appeal preferred to this Court by the present plaintiff. The litigation ended on the 31st March 1914, when this Court made a decree in favour of the present plaintiff declaring that his contention was well-founded and that his lease, as a matter of fact, conferred on

him a permanent interest. This decision, as we have said, was arrived at on the 31st March 1914. On the 6th April following, while both parties were under the impression that the litigation in this Court was still pending and were both ignorant of the fact that the litigation had already terminated in a decision in favour of the present plaintiff, the parties, to put an end to the litigation which both parties believed to be still pending, entered into a compromise in pursuance of which the present plaintiff executed the kabuliyat now in question and accepted the patta now in question, by which in lieu of his previous lease he gave up a certain portion of the lands comprised in his holding and accepted a temporary lease to endure for a term of nine years.

2. The question in this appeal is, whether the compromise entered into in ignorance of the fact that the litigation had already terminated, and the documents executed in pursuance of that compromise, are still to be held to be operative. It is not suggested that either party took advantage of the other. The finding of fact is that both parties were in ignorance of the essential fact that the litigation which they sought to terminate had already ended in a decision in favour of the present plaintiff.

3. We are of opinion that this is a case which comes clearly within the terms of Section 20 of the Contract Act, and in that view we are supported by the opinions expressed by the learned Judges who decided the case of Bibee Solomon v. Abdool Azeez 6 C. 687; 8 C.L.R. 169 ; 3 Ind. Dec. (N.S.) 446. In this view we think that the plaintiff-appellant is entitled to the declaration which he sought, namely that the patta and kabuliyat now in question are inoperative, and we accordingly decree this appeal.

4. Having regard to the plaintiff's allegation of coercion and undue influence, which have been found to be false, we make no order as to costs. The parties will bear their own costs throughout this litigation.

Walmsley, j.

5. I agree.

