

Rakhal Chandra Chatterjee Vs. Rohini Kumar Chatterjee

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Court : Kolkata

Decided On : Jan-03-1923

Reported in : AIR1923Cal650,74Ind.Cas.601

Judge : Rankin, J.

Appellant : Rakhal Chandra Chatterjee

Respondent : Rohini Kumar Chatterjee

Judgement :

Rankin, J.

1. This Rule was issued on two grounds, the first being that the Court below had no jurisdiction, and the second being that the judgment was erroneous in law, as the learned judge had failed to decide various questions raised in the pleadings. The learned Header for the petitioner has put his case thus: that in the plaint there are really to be found two causes of action one being an action for damages for the wrongful misappropriation of certain coal belonging to the plaintiff that wrongful misappropriation resulting in a criminal offence and, therefore, coming within Clause 35, Sub-clause (ii) of the. Second Schedule to the Plaintiff Small Cause Courts Act; and the second being a claim upon a contract evidenced by a document called a chit said to have been evident by the defendant to pay a certain price for the coal in question. The complaint made is that, although the suit; considered as a claim upon a chit, was within the competence of the Small Cause

Court, the learned Judge, while purporting to give judgment upon that cause of action has allowed himself to be influenced by the other aspect of the case and has in particular dealt with the question if interest upon a view which shows that he had not only in his mind the cause of action on the chit but the other cause of action which is not proper to a Small Cause Court.

2. Now, I have not the advantage of being able to tender the vernacular of the plaint in this case, but I have had the paragraphs explained to me and in my opinion the plaint properly read is a plaint upon the chit and is not a suit for damages either for theft of coal or for the conversion of the coal in any sense. It is quite true that in the third paragraph of the plaint it is alleged that the defendant in collusion with the Railway Officers took the coal and misappropriated it or converted it to his own use. I will assume that the meaning of that is exactly the same as if the plaint had stated that the defendant had stolen the property. Nevertheless, when one reads the plaint fairly, one sees that that paragraph is followed by a statement of subsequent facts, namely, that the plaintiff were to the defendant, that they discussed the matter, that the defendant executed the chit promising to pay', not damages at the market value but a particular sum made up in a particular way. There is nothing in the plaint to show that the transaction is represented as two alternative causes of action. At the end of the plaint, it is true, there is a reference to the place at which the cause of action arose and reference is made to the fact that within the jurisdiction of the Court the chit was executed and the goods were delivered. It has been suggested to me that that reference to the place where the goods were delivered shows that the plaintiff was harking back to a claim for damages for the conversion of the coal. I do not think so. Reference to the place of delivery would be one of the circumstances which would tend to show that the suit was properly brought if brought only and solely on the chit. In my view the plaint was intended to be, when carefully looked at, a claim for a particular sum of money shown by the chit and not a claim for damages either for conversion or for compensation for theft. That being so, neither of the ways in which the petitioner put his case when applying for the Rule, nor the very much better way in which his case was put before me by the learned Pleader, can stand. I think there is no objection in law to the case being tried in a Small Cause Court.

3. The matter really ends there as there is no substance at all in the second ground mentioned in their petition. But the learned Judge in dealing with the question of interest uses the following language: As regards interest, I think it proper, under the circumstances of this the defendant's conduct was most heinous from the very beginning, to grant it. The rate is not high. I think what the learned Judge meant was this: First of all, I do not think he was referring merely to the circumstances under which the coal was originally taken. He was referring to the fact that in his view the defendant had signed the chit and afterwards repudiated it. I think, moreover, the remark is to explain why he thinks it a proper case to grant interest at all.

4. As regards the rule of interest, what he says is, that the rate is not high and he allowed the rate claimed; that is, two per cent, per mensem. Now there is something to be said as a matter of discretion under the Civil Procedure Code against allowing a rate of interest as high as 24 per cent, per annum except in the presence of a contract to that effect, or* some evidence that that was the usual rate in the particular market concerned. There was no such allegation in the plaint and though it has been stated that it is the usual rate, the only finding of the learned Judge is that the rate is no thigh. I should rather have thought a rate of 24 percent per annum a very high rate of interest but this matter is that in any way affected in my judgment by the fact that the learned Judge has entertained a kind of case which was not within his jurisdiction. I think he bed full jurisdiction over all matters although in the plaint when the plaint is properly understood although, in the absence of evidence of custom, 24 percent, Per rate, I think he had jurisdiction to grant it. I, therefore, do not think it fit in this case to interfere.

5. The result is that the Rule is discharged with costs, one gold mohur.