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**RAM KHELAWAN & ANOTHER**

v.

**RATTAN SINGH & OTHERS**

B

[SUPREME COURT, 1969 (Moti Tikaram P.J.), 22nd January, 15th May]

Civil Jurisdiction

*Crops—claim of right to remain in occupation of land—protracted litigation—cane crops meanwhile grown cut and sold to millers by occupier—subsequently held to be trespasser—harvested crops acquiring character of goods—right to sale proceeds—interpleader—Native Land Trust Ordinance (Cap. 104-1955)—Sale of Goods Ordinance (Cap. 198-1955)—Law Reform (Miscellaneous Provisions) (Death and Interest) Ordinance (Cap. 20).*

C

*Sale of Goods—crops grown harvested and sold during pendency of litigation over right to possess land—whether goods—Native Land Trust Ordinance (Cap. 104-1955)—Sale of Goods Ordinance (Cap. 198-1955).*

*Land—sale by mortgagee—occupiers claiming tenancy from previous owner—protracted litigation—right to proceeds of crops grown harvested and sold during pendency of litigation by occupiers—Sale of Goods Ordinance (Cap. 198-1955).*

D

The defendants became the registered proprietors (through a mortgagee's sale) of freehold land on the 11th September, 1961, and on the 14th of that month gave notice to quit to the plaintiffs, who were in occupation of a portion of the land comprising 11½ acres. The plaintiffs claimed a tenancy and refused to quit. The question was litigated and on the 14th October, 1966, the Supreme Court ordered possession of the area in dispute to be given to the defendants and made an order restraining the plaintiffs from continuing to trespass thereon. The question of cane proceeds was not dealt with in that judgment. In interpleader proceedings to determine the right to cane proceeds paid into court by the millers in respect of cane grown harvested and sold by the plaintiffs to the millers between the 14th September, 1961, and the end of the 1966 cutting season —

E

*Held:* 1. The plaintiffs were trespassers in law during the relevant period.

2. Nevertheless, no illegality attached to the contract between them and the millers, the contract being in respect of harvested cane which became "goods" within the meaning of the Sale of Goods Ordinance.

G

3. The plaintiffs were entitled to payment out of the cane proceeds deposited in court.

Cases referred to :

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*Dhani Ram v. Habib Shah* (Civil Appeal No. 9 of 1957 C.A. — unreported); *Bagnall v. Villar* (1879) 12 Ch.D. 812; 48 L.J. (Ch.) 695; *Ferrier-Watson v. Sher Mohammed* (1953) 4 F.L.R. 88; *Indar Singh v. Native Land Trust Board* (1963) 9 F.L.R. 36.

Trial in the Supreme Court of issue in interpleader proceedings.

A B. C. Ramrakha for the plaintiffs.

K. A. Stuart for the defendants.

The facts sufficiently appear from the judgment.

B MOTI TIKARAM Ag. P.J.: [15th May 1969]—

The question for determination in this case is — who is entitled to the cane proceeds now deposited in court by the South Pacific Sugar Mills Limited?

C By Supreme Court Action No. 59 of 1967 the plaintiffs brought an action against South Pacific Sugar Mills Limited to recover from them the sum of £1,806. 16. 5 being cane proceeds in respect of cane harvested on Farm No. 903. By reason of conflicting claims made upon the cane proceeds by the parties, now constituted the plaintiffs and the defendants in this case, the Sugar Company had refused to pay out any moneys in respect of Farm No. 903. The present proceedings, i.e. Action No. 60 of 1967, were therefore commenced on the 14th of March, 1967 by the South Pacific Sugar Mills Limited by way of originating summons for interpleader relief. By virtue of an order in this action made by the Honourable the Chief Justice (Mr. Justice C. J. Hammett) on the 7th of April, 1967 the applicants, namely the South Pacific Sugar Mills Limited, were ordered to bring into court the money in question less their costs. The sum of £1,696. 6. 11 was eventually deposited in the Registry. By consent respondents 1 and 2, that is to say Ram Khelawan and Suruj Bali were constituted plaintiffs, and respondents 3 to 8 were constituted defendants 1 to 6.

F The present action came for hearing before me on the 22nd January, 1969 when counsel for both sides put in by consent the whole file together with all exhibits in Supreme Court Action 137 of 1965 in which action the present plaintiffs were the defendants and the present defendants were the plaintiffs. Both counsel agreed that the judgment in Civil Action No. 137 of 1965 was binding on both parties and that the evidence recorded therein was to form part of evidence in this case. In fact no evidence was adduced in the present case both counsel relying on legal arguments and the file tendered by consent.

G The facts giving rise to the conflicting claims to the moneys in question are as follows:—

(i) On the 11th day of September, 1961 the defendants became registered proprietors of two hundred acres of freehold land known as 'Korowabuta' being the whole of the land comprised in Certificate Title No. 4142 having purchased the said land from the mortgagee under mortgage No. 57762;

H (ii) At the time of the said purchase the present plaintiffs were occupying approximately 11½ acres of land known as Farm No. 903 which they claimed they occupied under a tenancy agreement dated 15th of March, 1956;

(iii) On the 14th of September, 1961 the present defendants gave the present plaintiffs notice to quit the said land i.e. Farm No. 903. The material part of the notice (see Ex. 8 in Civil Action No. 137/65) reads as follows:

“We hereby give you notice that we have purchased the land occupied by you (inter alia) from the Mortgagees of the Carr Estate and since we are advised that you hold no consent from the said Mortgagees to your occupation we give you notice to quit and deliver up possession of the land forthwith.”

(iv) The present plaintiffs did not comply with the said notice and the present defendants after a lapse of about 3½ years commenced Supreme Court Action No. 137 of 1965 against them, praying for:—

(a) possession of all the land comprised in the said farm No. 903;

(b) payment to them of all moneys held or payable by the sugar company for the purchase of sugar cane harvested from the said farm No. 903 from and after the 11th day of September, 1961;

(c) an injunction restraining the defendants or either of them or their agents and servants from entering upon or remaining upon or cultivating the land claimed by the plaintiffs, (i.e. the present defendants).

(v) The present plaintiffs defended this action on the basis of the agreement dated 15th March, 1952 (See Ex. 4 in Civil Action No. 137/1965) contending that they were in lawful occupation, the purchasers i.e. the present defendants, having bought the land from the mortgagees with notice of their occupation and their rights as tenants.

(vi) By judgment dated 14th of October, 1966 the Supreme Court gave possession of the said land to the present defendants and also made an order restraining the present plaintiffs from continuing to trespass on the said land. However for reasons given in the judgment no order regarding the cane proceeds was made; Ram Khelawan and Suruj Bali were not present personally when judgment was delivered;

(vii) On the 12th day of December, 1966 Suruj Bali the second plaintiff in the present action was served with a copy of judgment in Supreme Court Action 137 of 1965; and on the 20th of December, 1966 Ram Khelawan the first plaintiff in the present action was also served with a copy of judgment in action No. 137 of 1965;

(viii) The present plaintiffs had remained in possession after the notice to quit and continued to grow, harvest and supply cane to South Pacific Sugar Mills Limited under the contract in respect of Farm No. 903 until the cane cutting season in 1966. They vacated the land sometime in May 1967.

It is the plaintiffs' contention that they are entitled to the cane proceeds in question because :—

- (a) they planted, harvested and supplied sugar cane to South Pacific Sugar Mills Limited under the usual cane contract wherein the Sugar Company as millers were the purchasers and the plaintiffs were the sellers;
- (b) the sale was not sale of realty but of chattels i.e. sugar cane which had been severed from the farm;

The learned counsel relied on the judgment of the Fiji Court of Appeal in *Dhani Ram v. Habib Shah and Ors* (Civil Appeal No. 9 of 1957).

In *Dhani Ram's* case the respondent had contended that the contract of sale of cane between Dhani Ram and the millers was illegal because it was a contract to sell cane grown on land to which the seller Dhani Ram had no valid title. The Court of Appeal whilst recognising the fact that neither Dhani Ram nor his brother in law Kartar Singh had a valid title to the land on which the cane was grown and indeed considered Kartar Singh's occupation punishable under the Native Land Trust Ordinance, nevertheless held Dhani Ram to be entitled to the proceeds of the cane under the contract because before any active objection had been taken to Kartar Singh's occupancy of the land the sugar cane was harvested and it had become 'goods' within the meaning of Sale of Goods Ordinance. The Court of Appeal also held that Kartar Singh's title may have been avoidable but it was not avoided at the time of sale and therefore the millers, being buyers in good faith without notice, acquired a good title. It therefore held that Dhani Ram, by some family arrangements details of which the Court of Appeal considered irrelevant, had fulfilled the terms of his contract and so was entitled to the proceeds.

The defence contention in the case before me is that the plaintiffs are not entitled to the cane proceeds, they being trespassers with notice. It is agreed in this case that the cane proceeds involved are in respect of cane planted and harvested after the 14th of September, 1961 and there is no suggestion here that any cane was harvested and supplied to the millers by the plaintiffs after the 1966 cutting season.

Learned Counsel for the defence has argued that Dhani Ram's case is distinguishable because the farmer in that case had no notice that his title had been challenged. Further he cited the case of *Bagnall v. Villar* (1879) 48 L.J.Ch. 695 wherein it was held that a mortgagor remaining in concurrent occupation after mortgagee had put in a man in possession was not entitled to cut and remove the crops; and semble, a demand of possession by mortgagee is sufficient to dis-entitle the mortgagor to grow crops. He therefore argues that, *a fortiori*, a mortgagee who exercises his power of sale has the power to transfer his rights to crops thus putting the purchaser of the land in the same position as himself.

With respect *Bagnall's* case cited by the learned defence counsel does not afford much assistance because there the question was the right to standing crops.

Mr. Stuart has also cited two Fiji cases in support of his submissions. He first referred to the judgment of the Supreme Court in its appellate jurisdiction in *Ferrier-Watson v. Sher Mohammed* (1953) 4 Fiji Law Reports 88. In this case the Supreme Court set aside an order made by a magistrate that no writ of possession be issued until the cane was

harvested by the tenant against whom he had ordered possession of the land. The Supreme Court was of the view that the learned magistrate could not properly make the order in question for the reason that the tenancy agreement and the provision to hold over had expired. In the course of his judgment the learned Chief Justice (Sir Ragnar Hyne) observed, at page 91 —

“Counsel has argued that the tenant is entitled to the fruits of his labour. At the time he planted the cane, however, he was a trespasser and as such he cannot be entitled to cane planted on another’s land.”

It will therefore be observed that in *Ferrier-Watson’s case* it was a question of entitlement to cane growing on another’s land and not a question as to entitlement to proceeds of cane already harvested. The next case to which Mr. Stuart made reference was *Indar Singh v. Native Land Trust Board* (1963) 9 F.L.R. 36. Here the tenant had been in fact dispossessed and the cane was harvested by the Fijian owners who had moved into possession upon notice to quit becoming effective. Although the question of entitlement to the proceeds did arise in *Indar Singh’s* case the distinguishing factor is that the rightful owners of the land had actually gained physical possession and had harvested the cane planted by the dispossessed tenant. Presumably the proceeds of the cane were entered in the millers’ books in the name of the owners of the land.

I am satisfied that the plaintiffs were trespassers in law during the relevant period although it would appear that they continued cultivating Farm 903 after notice and until judgment in the belief, possibly on reasonable grounds, that they were entitled to do so under the tenancy agreement. Notwithstanding the fact that the plaintiffs were trespassers in my view the decision in *Dhani Ram’s case* is applicable to the facts of the present case. I am also of the opinion that none of the cases cited by the learned counsel for the defendants is an authority supporting the defence contention in circumstances and facts obtaining in this case. Although the plaintiffs were trespassers, no illegality attached to the cane contract entered into between them and the millers the contract being in respect of harvested sugar cane which became “goods” within the meaning of the Sale of Goods Ordinance. In holding the view that the plaintiffs are entitled to the cane proceeds deposited in court I am not to be taken to mean that the defendants are entirely without remedy. In my view their remedy lay in claiming mesne profits and damages for trespass. To deny the plaintiffs the proceeds of cane supplied by them to the millers would be to destroy the sanctity of a sale and purchase agreement entered into between the millers and the farmers wherein the farmers have fully performed their part of the contract. It is now for the millers to pay the price for the cane received by them in good faith and without notice. They have deposited the proceeds in court and I hold that the plaintiffs are entitled to those proceeds. In coming to this decision I have borne in mind that in so far as harvesting cane is concerned there has been no suggestion that the plaintiffs were in contempt of court by flouting a court order. Judgment is therefore entered for the plaintiffs and I order that the sum of £1,696.6.11 deposited in court be paid out to the plaintiffs after the expiration of 30 days. In the meantime liberty is reserved to the defendants to show



A cause if they wish, why the said sum should not be paid out immediately after the expiration of 30 days. I do not consider that this is a proper case in which the plaintiffs ought to be awarded any interest under the Law Reform (Miscellaneous Provisions) Ordinance. Each party will also bear its own costs.

*Judgment for plaintiffs.*