Privy Council Appeal No. 148 *of* 1924.
Bengal Appeal No. 71 *of* 1922.

Rameswar Bazaz - - - - - - - - *Appellant*

v.

Rani Shyama Sundari Debi - - - - - - - *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 26TH FEBRUARY, 1926.

Present at the Hearing:

VISCOUNT DUNEDIN.
LORD BLANESBURGH
SIR JOHN EDGE.
MR. AMEER ALI.

[*Delivered by* VISCOUNT DUNEDIN.]

This is a case in which one Rameswar Bazaz sues the Rani Shyama Sundari Debi for breach of contract. The Rani was in possession, under a putni, of certain brahmottar lands which were understood to contain valuable minerals. She had no decree of a Court affirming her right to these minerals. The minerals could belong to either the Rajah of Cossipore or Pachete, from whose estate the brahmottar lands had originally been taken, or to the Crown. But she might assert a title to the minerals. The plaintiff-appellant is in the coal business and was wishful to obtain the right to work this field. Accordingly, on 30th March, 1918, he sent to the Rani a letter of offer. It is unnecessary to quote the letter at length. It is enough to say that it offered to pay an earnest of Rs. 1,201 for a prospecting lease, and the result of prospecting being satisfactory to take a lease on terms of a certain further earnest and a royalty on minerals mined at certain rates, with right to use the surface, on certain further payments for the extraction of the mineral. Rs. 200

per biga was to be paid for damage to cultivated property. There was also the following clause : -

> " If ever any dispute over title arises with the Rajah of Cossipur, or any one else, then you shall remain liable for the same, you shall give me all necessary papers, etc., for the establishment of your title as they may be required by me."

On the 11th April, 1922, the Rani, acknowledging receipt of the earnest of Rs. 1,201, acceded to the request as to the property lease and mineral lease. Boring was done and mineral was proved to exist of a valuable quality. She, however, delayed to carry out the undertaking and eventually let the field to another person who was the Rajah's coal manager, and who, therefore, was in a position to settle with the Rajah.

The appellant instituted an action. At the trial he presented the agreements for a lease referred to. He put in a witness to show that the coal existed. He then put in an expert witness who, upon the hypothesis that the coal field belonged to the plaintiff, estimated that he would make a profit on the royalties fixed at the rate of Rs. 200 per biga. He led no other evidence. The defendant denied that there was a contract on various grounds.

The learned Trial Judge found that there was a contract and breach thereof, and assessed the damages at Rs. 120,000, the calculation being on the said figure of Rs. 200 per biga on 600 bigas, which he considered to be the size of the field.

On appeal the learned Judges affirmed the judgment of the Trial Judge as to the contract, and the breach thereof, but reduced the damages to Rs. 5,000, holding that there were no materials on which to assess the figure found by the Trial Judge.

Appeal is taken against this by the plaintiff-appellant, but no cross appeal was taken for the respondent as to the question of there being a contract.

Their Lordships are of opinion that the plaintiff took a completely wrong view of what the contract really was. In face of the clause quoted it is impossible to construe the contract as one in which the Rani warranted the mineral as conveyed. Accordingly all the plaintiff if the contract was implemented was to get was the chance of either fighting the Rajah, which, in view of the decision of this Board in *Sashi Bhusan Misra* v. *Jyoti Prashad Singh Deo* (44 I.A., 46) did not appear to offer a great prospect of success, or, by having secured the surface rights, being in a position to hamper the Rajah in letting to anyone else, and consequently impelling him to grant fair terms to the plaintiff himself. This the plaintiff was deprived of by the breach committed by the defendant. Exact valuation of such a lost chance was impossible, and the plaintiff had led no evidence to make approximate valuation easy. In the circumstances the Appellate Court, acting as a jury would have done, allowed Rs. 5,000. Their Lordships do not think they ought to interfere with this determination, and they will humbly advise His Majesty to dismiss the appeal with costs.

In the Privy Council.

RAMESWAR BAZAZ

v.

RANI SHYAMA SUNDARI DEBI.

DELIVERED BY VISCOUNT DUNEDIN.

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