

INDERJEET SINGH SIAL
v.
M/S. KARAM CHAND THAPAR

A

SEPTEMBER 25, 1995

[M.M. PUNCHHI AND SUJATA V. MANOHAR, JJ.]

B

Contract—Interpretation of deed assigning mining rights—Whether the word "royalty" was used to describe payment as part of consideration and not in the sense of State's share in the mineral—Held, yes; the word was used in a loose sense and meant to cover consideration due for future payments—Transfer of Property Act, 1882 S.54.

C

Words & Phrases : 'Consideration', 'Royalty'—Meaning of.

The predecessor-in-interest of the appellants, PS, obtained a mining lease from the Government of Central Provinces in 1938. He received permission from the government to assign his rights in the lease and prospecting licence in favour of the respondent. The government secured for itself payment of royalty from PS upto a date and thereafter from the respondent. In the deed of assignment in 1939, the respondents undertook to pay "royalty" as part of the consideration for the assignment over and above the royalty payable to the government.

D

E

These payments were suddenly stopped after twenty years leading to the appellants filing a suit for recovery of the sums due. The respondents resisted the suit contending that the deed postulated payment of royalty as known to the mining world as being representative of the State's share in the mineral for rights conferred and not payable to any individual. The earlier payments were termed as a mistake. The trial court negatived this contention and decreed the suit holding that the so-called royalty as used in the deed was merely a periodic payment.

F

G

The High Court reversed the finding on the ground that the deed having been drafted by lawyers, the word "royalty" had to be understood in the way it was by those in the mining business and that a distinction had to be kept between "royalty" and "consideration" with the former not forming part of the latter.

H

A **Allowing the appeal, this Court**

B **HELD : 1.1. In its primary and natural sense "royalty", in the legal world, is known as the equivalent or translation of *jura regalia* or *jura regia*. Royal rights and prerogatives of a sovereign are covered thereunder. In its secondary sense the word "royalty" would signify, as in mining leases, that part of the reddendum, variable though, payable in cash or kind, for rights and privileges obtained. It is found in the clause of the deed by which the grantor reserves something to himself out of that which he grants. It may even be a clause reserving rent in a lease, whereby the lessor reserves something for himself out of that which he grants. [55-B]**

C **1.2. In the instant case, the word "royalty" in the deed was used in a loose sense so as to convey liability to make periodic payments to the assignor for the period during which the lease would subsist. It really meant to cover an important item of the consideration due for future payments. S.54 of the Transfer of Property Act clearly postulates that sale is a transfer of ownership in exchange for a price paid or promised to be paid or part paid and part promised. In either situation title to the property would get transferred. [61-B, H]**

E **1.3. When in the deed the words "consideration" and "royalty" have been employed to convey a meaning, the same has been used in the plaint to convey the same meaning as originally conceived of by the contracting parties. [62-D]**

F **CIVIL APPELLATE JURISDICTION : Civil Appeal No. 778 of 1978.**

F **From the Judgment and Order dated 30.8.76 of the Madhya Pradesh High Court in F.A. No. 29 of 1971.**

G **S. K. Bhattacharya, (Sarwa Mitter) for Mitter & Mitter Co. for the Appellants.**

G **O.P. Malhotra, Ms. Meera Mathur and Ms. Hirachandani, for JBD & Co. for the Respondents.**

H **The Judgment of the Court was delivered by**

H **PUNCHHI, J. We are required in this appeal to ascribe a meaning**

to the word "royalty" figuring in a deed of assignment of mining rights between two beings, both devoid of regalia. A

In its primary and natural sense "royalty", in the legal world, is known as the equivalent or translation of *jura regalia* or *jura regia*. Royal rights and prerogatives of a sovereign are covered thereunder. In its secondary sense the word "royalty" would signify, as in mining leases, that part of the reddendum, variable though, payable in cash or kind, for rights and privileges obtained. It is found in the clause of the deed by which the grantor reserves something to himself out of that which he grants. It may even be a clause reserving rent in a lease, whereby the lessor reserves something for himself out of that which he grants. But "What is in a name? A rose by any other name would smell as sweet". So said Shakespeare. B
C

We will now get on to the merit of the matter.

The appellants are the plaintiffs. They are the heirs of one Sardar Pishora Singh Sial. By deed Ex. D-2 dated 19.11.1938, Pishora Singh obtained a mining lease from the erstwhile Government of Central provinces for extraction of coal in 420.27 acres of land in village Dighawani, District Chhindwara. He also obtained in the same village a prospecting licence vide deed Ex. D-3 dated 22.11.1938 to prospect of coal in an area measuring 242.29 acres. Before hand, on 16-11-1938 in anticipation of obtaining the lease and the licence he entered into a contract with Karam Chand Thapar and Brothers Ltd. to assign his rights in the lease and prospecting licence when maturing. On obtaining, he sought and received permission from the Government on 7.3.1939 vide Document Ex.D-4 for transferring those two rights to Karam Chand Thapar and Brothers Ltd. The Government however secured thereunder for itself payment of due royalty from Pishora Singh uptill a particular date and thereafter from the said company. On such permission being granted, a sale deed was executed by Pishora Singh Sial in favour of Karam Chand Thapar and Bros. Ltd. on 13th June, 1939/30 June, 1939 vide document Ex. D-5. This first assignee later assigned its rights, interests and obligations in favour of the second assignee M/s. Rawanawara Collieries vide document Ex. D-8 dated 5-7-1940 and in the same pattern, the second assignee sold its rights, interests and obligation to the third assignee M/s. Oriental Coal Company Ltd. The lease and licence was for a period of thirty years starting from particular dates as embodied in the initial deeds. D
E
F
G
H

A In the assignment deed Ex. D-5, the consideration settled has been detailedly mentioned. We would advert to the same later. At this juncture, we need only to highlight that there are distinct two royalties which are playing their part. First is the royalty which Pishora Singh, legally bound, had undertaken to pay to the State Government on obtaining mining and prospecting rights. The State Government while sanctioning subsequent transfers had to and specifically kept preserved that right against all the subsequent transferees. That royalty undeniably was in assertion of the State's right to the mineral gotten or to be gotten, and for the rights and privileges conferred in regard thereto. That the State had such right in such venture as known to law, in the primary or secondary sense, is beyond dispute. The second "royalty" figuring is embodied in the assignment deed Ex.D-5 wherein royalty has been undertaken to be paid by Karam Chand Thapar and Bros. Ltd. to Pishora Singh to the extent and manner stipulated therein as part of the consideration for assignment, over and above the royalty payable to the State. The liability to pay such stipulated royalty to Pishora Singh ultimately rested on the three afore-mentioned assignees, jointly as well as severally. And in the discharge of that liability undisputably periodic payments had been made to Pishora Singh (including his heirs) for about 20 years. Then suddenly, as is the case, the assignees cooled off and stopped making payments. Correspondence then ensued between the parties, but to no avail. Ultimately, the heirs of Pishora Singh Sial filed a suit against the three assignees for recovery of the sums of royalty then fallen due, together with interest; total claim then being for Rs. 2, 32,627.18 upto a certain period and on quantities of coal despatched.

F The defendants-respondents contested the suit. The execution of the documents *inter se*, reference of which has been made earlier, was not denied. The main thrust of the defendants was that deed Ex. D-5 postulated payment of royalty, descriptively well known to the mining world, which is representative of the State's share in the mineral for such rights conferred, but not by a prerogative exercised by an individual. It was further pleaded that the situation of law at that point of time, when the suit was being contested, was that demand of any payment as royalty by an individual was prohibited. Past payments of almost 20 years were termed by the defendants as having been made mistakenly. The Trial Court then on interpreting the terms of document Ex. D-5 held that the obligation of the defendants-respondents to pay the so called royalty to the plaintiffs-

appellants was merely a periodic payment, as in the deed stipulated, and was thus not royalty as such. Accordingly, the Trial Court decreed the suit but reduced the interest on the sum claimed to 4 per cent per annum till payment, details of which are evident from its judgment and decree. A

The defendants' first appeal before the High Court of Madhya Pradesh was placed before a Division Bench of two Hon'ble Judges. One of whom took the view that the stipulated payment was meant to be royalty as such and thus not claimable by the plaintiffs as individuals. We would rather quote the very words employed by the Hon'ble Judge : B

"The tenor of the document clearly shows that a distinction was drawn between consideration for assignment of the lessee's interest which was to be paid to the vendor in addition to this consideration for the remaining period of the lease subsequent to the transfer of the lessee's interest by the vendor. This distinction has also been maintained in the plaint averments and the suit is expressly for recovering the amount claimed as royalty subsequent to the transfer of the lessee's interest. There is thus no ambiguity in the plaintiffs' case contained in the plaint which clearly shows that the claim is not for payment of a part of the consideration but is only for payment of the royalty claimed in addition to the consideration of Rs. 30,000 for transfer of the lessee's interest. The endorsement of registration on Ex.D-5 also indicates that the consideration for the transfer was treated to be the sum of Rs. 30,000 only. It is also significant that Ex. D-5 is drafted as a formal document apparently by some lawyer and the parties thereto were persons quite conversant with mining leases and consequently with the meaning of the expressions 'consideration' and 'royalty'. That being so, there is no reason to construe the word 'royalty' in a manner different than that in which it is used and understood by persons in the mining business. All these facts clearly show that royalty as it is ordinarily understood by persons in the mining business and it was in that sense that the word was used also in Ex. D-5 as distinct from the consideration for assignment of the lessee's interest. There is thus no basis to contend that the suit is for recovery of a part of the unpaid consideration and the term providing for payment of royalty must be construed as one providing for deferred payment of a part of the consideration." C
D
E
F
G
H

A The other Hon'ble Judge agreed with the view so expressed by his colleague. Yet he went on to hold that the term in the deed Ex. D-5 directing payment of royalty or rent would be offensive to the enjoyment of absolute rights and thus hit by the provisions of Section 11 of the Transfer of Property Act. The appeal of the defendants-respondents was thus allowed and the suit was dismissed. This gave birth to this appeal.

B
 C Leave was sought from the High Court by the appellants, to appeal to this Court *inter alia* on the basis that when the Hon'ble Judge on applying Section 11 of the Transfer of Property Act had voided an important element of consideration of payment of royalty fixed in the assignment deed, it raised an important question of law of public importance. The Hon'ble Judges hearing the matter met the claim of the appellants by observing that the point regarding the applicability of Section 11 was not the basis of decision and was only incidentally mentioned by one of the Hon'ble Judges. Further it was viewed that in the circumstances, it could not be said that the case involved a question relating to the interpretation of Section 11 of the Transfer of Property Act requiring decision of this Court. In this way, the application for leave was summarily dismissed. On such expressed views of the High Court with regard to Section 11 of the Transfer of Property Act not having any role to play, we are absolved of the need to prod the provision, for the High Court itself has virtually reviewed its decision on that point, by declaring that the said provision of law was not the basis of the High Court's decision.

D
 E The time has now arrived to take stock of the term which has raised all this argument. Even though lengthy it is worth reproduction :

F "III CONSIDERATION

(a) Rs. 10,000 Ten Thousand has been paid to the vendor by the vendee as earnest money at Calcutta at the time of the Execution of the agreement of sale d/- 16th November 1938.

G (b) 2000 (Two thousand) FULLY PAID ORDINARY SHARES of the value of Rs. 10 (ten) each in the Capital of the Proposed "RAWANWARA COLLIERIES LIMITED" shall be allotted to the VENDOR by the VENDEE within SIX MONTHS hereof, on the said "RAWANWARA COLLIERIES LIMITED" being incorporated under the Indian Companies Act of 1913. In the event of

H

such a company being not incorporated for any reason whatsoever within the said period of SIX months THE VENDEE shall pay the sum of Rs. 20,000 (Twenty Thousand) only to the SAID VENDOR in cash. A

(c) In addition to the consideration paid as stated in clause (a) of this paragraph and that agreed to be paid by the VENDEE to the said VENDOR as per clause (b) of this Paragraph the said VENDEE company effectively binds itself, its successors, transferees, assigns and liquidators to pay to the SAID VENDOR, his heirs, executors, representatives, administrators, and assigns, Royalty at the rates mentioned below and subject to the terms stated in Clauses hereinafter following in this paragraph : B C

(d) (i) Royalty or rent at -/4/- (annas four) per ton on all coal despatched from the properties hereby conveyed subject to the minimum stated in clause (d) (iii) below. D

(ii) The payment of the said Royalty or the guaranteed minimum Royalty as per Clause (d) (iii) below shall commence a year after the execution of these presents i.e. no royalty is payable to the VENDOR for the aforesaid period of one year.

(iii) It is however definitely expressed and declared that the VENDEE shall pay to the VENDOR Rs. 1500 (One thousand and five hundred) as minimum guaranteed Royalty or rent every half year from the second year reckoned from the date of the execution of these presents, that is to say, after the one year stated in clause (d) (ii) above and thereafter that is to say from the THIRD YEAR reckoned as above, Rs. 3600 (Three Thousand and six hundred only), every half year at Chhindwara during the whole of the unexpired term of the hereincited mining lease and the prospecting license or mining lease granted to the VENDEE over all or any portion of the lands covered by the aforesaid prospecting license d/- 19-11-1938 as well as during the entire term of fresh leases of the said concessions if and when granted or renewed by the Government to or in favour of the VENDEE. E F G

(iv) The aforesaid half yearly Royalty or rent as per clause (d) (iii) above shall be paid to THE VENDOR by the VENDEE irrespec- H

A tive of whether any coal be raised and despatched from the mines
or not. If in any half year no coal is won or despatched or sufficient
B coal is not won and despatched to produce for that half year at
the rates mentioned in clause (d)(i) above Royalties aggregating
the amount of the minimum Royalty, mentioned in clause (d)(iii)
above the VENDEE shall either pay the said minimum Royalty or
such a sum as shall along with Royalty on the coal actually won
and despatched during that half year, be required to make up the
minimum royalty guaranteed above.

(v) If the VENDEE Company at any time desires to transfer its
C rights and title in the colliery properties hereby conveyed THE
VENDEE hereby undertakes to keep the said VENDOR FULLY
AND EFFECTIVELY covered, to his satisfaction, to the extent
of his (VENDOR'S) Royalty-rights, the transferee agreeing and
D covenanting to comply with the several stipulations and obligations
as embodied in these presents."

It is manifest that four reasons have been advanced by the High
Court to upset the judgment and decree of the Trial Court. These are (i)
that deed Ex. D-5 was drafted as a formal document apparently by some
E lawyer and parties thereto were persons quite conversant with mining
leases; and consequently with the meaning of the words "consideration" and
"royalty"; (ii) the word "royalty" used in the document must be understood
the way it is used and understood by the persons in the mining business;
(iii) the consideration money was Rs. 30,000 only as the endorsement of
F registration on the deed indicated and that was the total consideration; and
(iv) in the plaint distinction has been kept between the words "considera-
tion" and "royalty" and so royalty could not be part of the consideration.

With respect we do not agree with any of those reasons. It may be
true that the document Ex.D-5, written in English language, may have been
G prepared by a lawyer and was entered into between persons conversant
with the vocabulary employed in mining leases. Yet these factors *per se*
cannot conclude the matter that the word "royalty" used in the document
was meant to be royalty as such. If intelligence and responsibility is to be
H attributed to the draftsman and the contracting parties for using the word
"royalty" in that technical sense, then it cannot be imagined that they would
have overlooked the status of the contracting parties *inter se*. We cannot

thus assume that they were well versed in one aspect and not in the other. A
 Strictly speaking, had the draftsman and the signatories to the deed meant
 "royalty" as such, then they could not have omitted to identify who had the
 sovereign prerogative or the State part to play. The word "royalty" thus, in
 the deed was used in a loose sense so as to convey liability to make periodic
 payments to the assignor for the period during which the lease would B
 subsist; payments dependent on the coal gotten and extracted in quantities
 or on despatch. We have therefore, to construe document Ex.D-5 on its
 own terms and not barely on the label or description given to the stipulated
 payments. Conceivably this arrangement could well have been given a
 shape by using another word. The word "royalty" was perhaps more handy C
 for the authors to be employed for an arrangement like this, so as to ensure
 periodic payments. In no event could the parties be put to blame for using
 the word "royalty" as if arrogating to themselves the royal or sovereign right
 of the State and then make redundant the rights and obligations created
 by the deed. D

The commodity goes by its value; not by the wrapper in which it is
 packed. A man is known for his worth; not for the clothes he wears. Royal
 robes worn by a beggar would not make him a King. The document is
 weighed by its content, not the title. One needs to go to the value, not the E
 glitter. All the same, we do not wish to minimise the importance of the
 right words to be used in documents. What we mean to express is that if
 the thought is clear, its translation in words, spoken or written, may, more
 often than not, tend to be faulty. More so in a language which is not the
 mother tongue. Those faulted words cannot bounce back to alter the
 thought. Thus in sum and substance when the contracting parties and the F
 draftsman are assumed to have known that the word "royalty" is meant to
 be employed to secure for the State something out of what the State
 conveys, their employment of that word for private ensuring was not
 intended to confer on the assignor the status of the sovereign or the State,
 and on that basis have the document voided. Therefore, we are of the view
 that the word "royalty" was used in the deed misdescriptively and was really G
 meant to cover an important item of the consideration due for future
 payments. Section 54 of the Transfer of Property Act clearly postulates that
 sale is a transfer of ownership in exchange for a price paid or promised to
 be paid or part paid and part promised. In either situation title to the
 property would get transferred. This, in our view, demolishes the first two H
 reasons.

A On the third reason about the endorsement of the deed showing consideration of Rs. 30,000 only which was part of the consideration covered in the deed, the endorsement itself is the answer. The stamp reads:

"..... who is personally known to me, admits execution of the so called conveyance deed and receipt of consideration in full/part
B Rs. 30,000 (Thirty Thousand only) as per documents....."

Whereas the Sub-Registrar has scored off whatever was necessary in the alternate words provided in the stamp, he has nowhere cancelled the inappropriate word to signify whether Rs. 30,000 was full consideration or part consideration. Rather he has left the consideration to be of the nature
C as reflected in the document. The endorsement *per se* thus cannot be so read so as to rule that Rs. 30,000 was the total consideration. It was plainly a part payment and the balance consideration was meant to be periodically paid in the sum and manner stipulated in the deed. A fortiori on such analysis the fourth reason also fails because when in the deed the words
D "consideration" and "royalty" have been employed to convey a meaning, the same has been used in the plaint to convey the same meaning as originally conceived of by the contracting parties.

Therefore, in our view, the well reasoned judgment of the Trial Court was erroneously upset by the High Court in depriving the plaintiffs-appellants of their rightful dues. As a result, we allow this appeal, set aside the impugned judgment and decree of the High Court and restore that of the
E Trial Court, with costs.

S.M.

Appeal allowed.