

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Parker.

GURUSAMI (PLAINTIFF), APPELLANT,

and

SUBBARAYA AND OTHERS (DEFENDANTS), RESPONDENTS.*

1888.
August 7.
November 26.

Champerty—Bonâ fide litigation—Absence of corrupt motive—Inadequacy of price.

In consideration of a loan of Rs. 30 made by plaintiff to defendant to enable defendant to recover from strangers certain land, defendant sold to plaintiff a portion of the said land, the value of which was about Rs. 100. The District Court held that the transaction was champertous and dismissed a suit by plaintiff to enforce his rights:

Held, that the inadequacy of the price was not of itself sufficient to invalidate the transaction.

APPEAL from the decree of S. T. McCarthy, District Judge of Chingleput, reversing the decree of C. Suri Ayyar, District Munsif of Chingleput, in suit No. 485 of 1885.

The facts appear from the judgment of the Court (Muttusami Ayyar and Parker, JJ.).

Desikacharyar for appellant referred to *Abdool Hakim v. Doorga Proshad Banerjee*(1), *Damodhar Madharji v. Kahandas Narandas*(2); *Ram Coomar Coondoo v. Chunder Canto Mookerjee*(3), *Chedambara Chetty v. Renga Krishna Muthu Vira Puchaiya Naicker*(4), and *Fischer v. Kamala Naicker*(5).

Ramachandra Ayyar for respondents.

JUDGMENT.—Two pangus of land belonged to respondent No. 1, but they were in the possession of respondent No. 3 and others. In order to file a suit against the latter for their recovery, the former executed document A in favor of the appellant. By this document respondent No. 1 reserved for himself a quarter kani of land out of two pangus, conveyed a moiety of the remainder to the appellant for Rs. 30, and agreed to place him in possession if the respondent No. 1 obtained a decree for the recovery of two pangus and possession under process of Court. The appellant's case was that respondent No. 1 instituted a suit with the aid of

* Second Appeal No. 1280 of 1887.

(2) 8 Bom. H.C.R., 1.

(4) L.R., 1 I.A., 241.

(1) I.L.R., 5 Cal., 4.

(3) L.R., 4 I.A., 23.

(5) 8 M.I.A., 170.

Rs. 30 paid by him and obtained a decree for, and possession of, two pangus, that from 1883 appellant and respondent No. 1 shared the produce of the land, and that as it was inconvenient to hold joint possession, he claimed partition and separate possession of the land to which he was entitled under document A. The District Munsif considered that document A was true, that the consideration money was paid, and that though the land was worth Rs. 200 and Rs. 30 was an inadequate price, it was due to respondent No. 1, being out of possession at the time of the sale in appellant's favor and to the understanding that the sale was to take effect only in the event of respondent No. 1 succeeding in the suit which he desired to institute. On appeal, the Judge was of opinion that the transaction was of a champertous character and dismissed the suit on that ground, though he incidentally made some remarks against the genuineness of document A. The contention in second appeal is that the transaction is neither champertous nor opposed to public policy.

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What the Courts have to consider in deciding whether a transaction is champertous in this country is, to quote the words of the Judicial Committee in the case of *Chedambara Chetty v. R. K. Naicker*(1) "whether the transaction is merely the acquisition of an interest in the subject of litigation *bonâ fide* entered into, or whether it is an unfair or an illegitimate transaction got up merely for the purpose of spoil or of litigation, disturbing the peace of families and carried on from a corrupt or improper motive." Again, in *Fischer v. Kamala Naicker*(2) the Judicial Committee observed: "The Courts seem very properly to have considered that the champerty or more properly the maintenance into which they were inquiring was something which must have the qualities attributed to champerty or maintenance by English Law; it must be something against good policy and justice, something tending to promote unnecessary litigation, something that is in a legal sense immoral and to the constitution of which a bad motive is, in the same sense, necessary." Applying the test to the case before us, we do not see our way to saying that the transaction is tainted with any of the corrupt motives mentioned above. Judging from the result of the litigation which the transaction was intended to originate or aid, we see no reason to infer

(1) I.L.R., 1 I.A., 241.

(2) 8 M.I.A., 170.

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any improper motive. The only fact referred to by the Judge is that the consideration for document A was Rs. 30, whilst the price of the land is at present Rs. 200. The present price of a moiety would be Rs. 100 and a deduction must be made from it on account of the land reserved for the vendor. But in deciding whether the transaction was *bonâ fide* or otherwise with reference to inadequacy of price, regard should be had to the state of things as it might have appeared to the contracting parties at the time when the transaction was entered into; for, even a *bonâ fide* purchaser who takes upon himself the risk of litigation and consents to lose what he pays in a specified event, would ordinarily hesitate to pay the price which the property would fetch when the litigation proves successful. We are unable to concur in the opinion of the Judge that the transaction is champertous because the respondent No. 1 accepted an inadequate price on account of his need, and we shall therefore ask him to return a finding on the first issue, and, if it is in the affirmative, also to return findings upon the evidence on record on the other questions raised by the memorandum of appeal filed in his Court within six weeks from the date of the receipt of this order, when ten days will be allowed for filing objections.

ORIGINAL CIVIL.

Before Mr. Justice Kernan.

SHANKS v. THE SECRETARY OF STATE FOR INDIA IN COUNCIL.*

1889.
 February 20.

Civil Procedure Code, s. 257—Practice—Order for payment of costs of day—Payment into Court or to party.

Where a party to a suit was directed by the High Court to pay the costs of the day, and his solicitor paid the money into Court under s. 257 of the Code of Civil Procedure.

Held, that section was not applicable as the order was not a decree:

APPLICATION made on 20th February 1889 before Mr. Justice Kernan in Chambers for leave to execute an order passed on 18th October 1888 that defendant should pay the plaintiff the

* Civil Suit No. 174 of 1887.