

APPELLATE CIVIL.

1900

January 30.*Before Mr. Justice Blair and Mr. Justice Burkitt.*

SHIAM LAL (PLAINTIFF) v. CHHAKI LAL AND OTHERS (DEFENDANTS).^{*}
Act No. IX of 1872 (Indian Contract Act) section 23—Agreement opposed to public policy—Contract relating to purchase of land within his circle by a patwari—Act No. XIX of 1873 (N.-W. P. Land Revenue Act) Section 257.

Held that a contract entered into by a patwari for the purchase for his benefit of land situated within his circle is a contract which is opposed to public policy, even though it may not be rendered void by the rules framed by the Board of Revenue for the guidance of patwaris.

THIS was a suit for declaration of proprietary rights in and for possession of certain zamindari property brought under the following circumstances. The plaintiff was at one time patwari of a village called Birari, and, whilst occupying that position, had purchased, in the years 1878 and 1882, certain property within his circle; but, inasmuch as such a transaction was forbidden by the Rules of the Board of Revenue, he had made the purchase in the name of Udai Ram, his uncle. The plaintiff alleged that during Udai Ram's lifetime the profits of the property were regularly paid to him; but that after Udai Ram's death the defendants, who were his representatives, denied the plaintiff's title and refused to hand over the profits. Hence this suit. The Court of first instance (Subordinate Judge of Agra) gave the plaintiff a decree. The defendants appealed. The lower appellate Court (District Judge of Agra) decreed the appeal and dismissed the suit on the findings, first, that the transaction in question was absolutely forbidden by the Rules of the Board of Revenue, which had the force of law, and, secondly, that the transaction was opposed to public policy. The plaintiff appealed to the High Court.

Munshi *Ram Prasad* and Pandit *Sundar Lal* for the appellants.

Pandit *Moti Lal Nehru* for the respondent.

BLAIR and BURKITT, JJ.—It is unnecessary for us to set forth the facts of this case, which will be found in the judgment of the

^{*} Second Appeal No. 572 of 1897, from a decree of F. W. Wells, Esq., District Judge of Agra, dated the 26th June 1897, reversing a decree of Maulvi Syed Siraj-ud-din, Subordinate Judge of Agra, dated the 31st March 1897.

Court below. The lower appellate Court is wrong in saying that the patwaris' rules in force in 1878 and 1882, issued by the Board of Revenue with the sanction of the Government, had the force of law. In that matter the learned District Judge is clearly mistaken. Under section 257 of Act XIX of 1873, the only rules which, after publication in the *N.-W. P. Gazette*, acquire the force of law, are the rules mentioned in cls. (a) and (b) of that section, and they are rules to be made by the Local Government itself. If the rules as to patwaris be assumed to have been made under cl. (c) of that section, they clearly have not the force of law, and practically would be no more than departmental rules made by the Board of Revenue with the sanction of the Local Government. In this matter, therefore, the Court below was wrong.

But though, in our opinion, the Court below was wrong in that matter, it does not follow that its decision must be set aside. The learned Judge has held practically that the contract relating to purchase of land within his circle, made by the patwari for his benefit, is opposed to public policy. In our opinion that finding is correct. The learned Judge very properly puts it that "it is the duty of a patwari to keep impartially the accounts of zamindars and tenants or between zamindars with conflicting interests;" and further that "no patwari can do his duty properly if he has a direct interest in property in his circle." We think that these remarks are well founded. They show how the interest of a patwari, who has acquired a proprietary title to land within his circle, conflicts with his duty as a patwari bound impartially to record matters of most vital importance to both zamindars and tenants. In the present case the plaintiff admits that having contrary to the rules purchased land in his circle, he, with the object of concealing that purchase from his superiors, took the conveyance in the name of another person. The representatives of that other person are the defendants to this suit. Their predecessor in title was, according to the plaintiff, an active party to this transaction, which transaction we regard as being entered into for purposes opposed to public policy. For the above reasons we concur in the decree of the lower appellate Court dismissing the plaintiff's suit, and we dismiss this appeal with costs.

Appeal dismissed.

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