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and so forth of a patwari, under section 234, confers any right to qualify the general law with regard to contracts or anything else, and I think the draftsman, who drew these rules, knew his business too well, and therefore omitted to do any such thing. In my view, a rule declaring contracts void would have been *ultra vires*, but that no such intention was ever contemplated is, I think, clearly indicated by the penalty provided by rule 11 which immediately follows the prohibition in rule 10. If the rules are *intra vires* they have "the force of law" in their application to the patwari, whether they say so or not, but that does not mean that they qualify the general law. I only desire to add that I entirely agree with what has been said with regard to the finding about money-lending.

BY THE COURT.—The order of the Court is that the appeal is allowed, the case is remanded to the court of first instance through the lower appellate court with directions to re-admit the case on its original number on the file and to proceed to hear the same according to law. The parties will bear their own costs in this Court and in the lower appellate court. All other costs will be costs in the cause.

Appeal decreed and cause remanded.

1916
July, 10.

Before Sir Henry Richards, Knight, Chief Justice, Mr. Justice Muhammad Rafiq and Mr. Justice Walsh.

KAMALA DEVI (PLAINTIFF) v. GUR DAYAL AND OTHERS (DEFENDANTS)*

Act No. IX of 1872 (*Indian Contract Act*), section 23—*Contract—Agreement opposed to public policy—Purchase by a kanungo of mortgaged property.*

Held, that there exists no legal prohibition against a kanungo purchasing mortgaged property and suing to redeem the mortgage existing on it, nor is such a transaction opposed to public policy within the meaning of section 23 of the *Indian Contract Act, 1872*.

THE facts of the case were briefly as follows:—

This was a plaintiff's appeal. The suit was to redeem a mortgage. The plaintiff had purchased the equity of redemption from the heirs of the original mortgagor.

* Second Appeal No. 1088 of 1915, from a decree of Gopal Das Mukerji, third Additional Subordinate Judge of Aligarh, dated the 6th of April, 1915, confirming a decree of Hanuman Prasad Varma, Munsif of Haveli, dated the 16th of November, 1914.

The defence was that the real purchaser of the equity of redemption was the plaintiff's husband who was a supervisor kanungo and as such not entitled to purchase property without the sanction of the Government. The courts below found that the real owner of the property was the kanungo, the plaintiff being merely his *benamidar*. They further held that the purchase by the kanungo was against public policy and dismissed the suit. The plaintiff appealed to the High Court.

The appeal coming up for final hearing before the Full Bench along with another second appeal—*Bhagwan Dei v. Murari Lal* (*supra* p. 51.)

Babu *Piari Lal Banerji*, for the appellant, adopted the arguments addressed by the appellant in that case.

Munshi *Panna Lal*, for the respondent :—

This is a much stronger case, and is governed, not by the departmental rules framed by the Board of Revenue, but by rules framed by the Local Government. See orders of the Government, United Provinces, department I—IX, rule 311 (Appointment department) and these rules certainly have the force of law. The contract, if it be held not to be illegal, is in any case, against public policy. "Against public policy" is a very wide term and would certainly include everything which the Government as a public body thinks inconvenient or undesirable and to prevent which it has framed departmental rules. He read the following passage from Pollock on Contracts :—"Things lawful in themselves but such that individual citizens could not without general inconvenience be allowed to set bounds to their freedom of action with regard to those things in the same manner or to the same extent as they may with regard to other things. Agreements falling within this third description are void as being against public policy." (p. 228.)

This Court has consistently held that a purchase made by a patwari or a kanungo is against public policy; *Shiam Lal v. Chhaki Lal* (1), *Sheo Narain v. Mata Prasad* (2).

Babu *Piari Lal Banerji*, for the appellant, was not heard in reply.

(1), (1900) 1. L. R., 22 All., 220

(2) (1905) 1. L. R., 27 All., 73.

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KAMALA DEVI
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GUR DAYAL.

RICHARDS, C.J., MUHAMMAD RAFIQ and WALSH, J.J. :—This appeal arises out of a suit for redemption of a mortgage. Amongst other pleas taken was the plea that the property had been acquired in the name of the plaintiff but really for her husband Khub Lal who occupied the Government post of registrar kanungo, and that under the rules dealing with the conduct of public servants, such an officer was not entitled to acquire property. The court of first instance having found the other issues in favour of the plaintiff dismissed the plaintiff's suit on the ground that the assignment to her was "contrary to public policy." The lower appellate court, without dealing with the other issues, upheld the decision of the court of first instance on the same ground. The plaintiff comes here in second appeal, contending that the decision on the point of law was not correct. We have this day in a connected Second Appeal No. 1502 of 1914 dealt with very much the same question. In that case a patwari had taken an assignment in the name of his mother, of a certain mortgage. A suit brought by the mother to enforce the mortgage was dismissed on the same ground. Section 234 of the Land Revenue Act provides for the making of rules in connection with patwaris and kanungos. Certain rules have been made with regard to patwaris, but apparently no similar rules have been made with regard to kanungos. At least our attention has not been called to any such. Our attention has been drawn to "rules for the conduct of Government servants" and in particular no. 311. Part of that rule is as follows:—"A native of India, who is a member of the Indian Civil Service, or holds any office ordinarily reserved for member of the Indian Civil Service, and any Government servant belonging to the provincial or subordinate civil service may continue to hold any immovable property actually held by him at the time of his entry into Government service, and may thereafter acquire any immovable property by succession, inheritance or bequest, or, with the previous sanction of the Local Government or such Heads of departments as may be specially empowered by the Local Government in this behalf, by purchase or gift." It may perhaps be implied that it was intended to prevent a Government servant from acquiring immovable property after his appointment without the sanction of the Government or

Head of his department, but there is no express provision that he shall not do so. We think that it is impossible to argue that this rule by itself is sufficient to make the transfer to the kanungo's wife null and void. Nor do we think, for the reasons stated in our judgement in the connected case, that the transfer can be considered void on the ground of public policy. We, therefore, allow the appeal, set aside the decrees of both the courts below and remand the case to the lower appellate court with directions to re-admit the appeal upon its original number in the file and to proceed to hear and determine the same according to law, having regard to what we have said above. Each side will bear their own costs of this appeal. The other costs will be costs in the cause.

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v.
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Appeal decreed and cause remanded.

APPELLATE CIVIL.

Before Mr. Justice Walsh and Mr. Justice Sundar Lal.

BHIRGU NATH CHAUBE AND ANOTHER (PLAINTIFFS) v. NARSINGH TIWARI
AND ANOTHER (DEPENDANTS),*

1916
July 3.

Hindu Law—Sale by father of joint family property without legal necessity—Suit by sons to repudiate the sale—Mesne profits payable by purchaser from date of such repudiation.

Where the father, as manager, alienates joint Hindu family property without legal necessity, and the sons repudiate the sale, a purchaser who had no notice that the father was incompetent to sell the property is in equity only liable to pay mesne profits from the date of such repudiation. *Mugun Chunder Chaitoraj v. Surbessur Chuckerbutty* (1), *Dakhina Mohan Roy v. Saroda Mohan Roy* (2) and *Grish Chunder Lahiri v. Shoshi Shikharewar Roy* (3) referred to.

THE facts of this case were as follows :—

Certain property belonging to a joint Hindu family consisting of a father and his minor sons was sold in 1900 by the father. The sons, on attaining their majority, brought a suit, in December, 1912, impugning the sale on the ground that it was not justified by any legal necessity and praying for recovery of possession and mesne profits. The father had died before the suit. The claim

*Second Appeal No. 1151 of 1915, from a decree of Muhammad Husain, Subordinate Judge of Ghazipur, dated the 22nd of April, 1915, reversing a decree of Aijaz Husain, Munsif of Muhammadabad, dated the 31st of August, 1914.

(1) (1867) 8 W. R., 479.

(2) (1893) I. L. R., 21 Cal., 142.

(3) (1900) I. L. R., 27 Cal., 951; L. R., 27 I. A., 110.