1919

RAM KHELAWAN KASAUNDHAN v. RAM NARESH SINGH.

This judgment was delivered on th 18th of February last and does not appear to have been reported. Their Lordships adhered to the view expressed by them in *Hurro Nath Rai Chowdhri* v. *Randhir Singh* (1), and approved of the decision of this Court in *Nand Ram* v. *Bhupat Singh* (2). It is true that no evidence was given on the point by either party in this case, but, as their Lordships observed in the case to which we have referred, "the thing spoke for itself." There can be no doubt that the rate of interest agreed upon by the manager of the family was inordinately high. The property was amply sufficient to secure repayment of Rs. 900, with reasonable interest, and the fact that the plaintiffs seek to recover more than Rs. 6,000, by sale of the mortgaged property, is sufficient to show that the security was ample. Under these circumstances, we think the learned Subordinate Judge was right in reducing the rate of interest to simple interest at Rs. 18 per cent. per annum. Allowing interest at that rate, the plaintiffs have not only recovered from the defendants the principal amount, but also interest at that rate. The suit was, therefore, rightly dismissed, and we dismiss this appeal with costs.

Appeal dismissed.

Before Mr. Justice Piggott and Mr. Justice Walsh.

CHAHLU (DEFENDANT) *v.* PARMAL (PLAINTIFF).*

1919

May, 5.

Act No. IV of 1882 (*Transfer of Property Act*), *section* 6—*Compromise of claim to possession of property of deceased person—Such compromise not a transfer of reversionary rights.*

Of four separated Hindu brothers, Hazari, the second, died first, leaving a widow, Musammat Mulo, who married the eldest brother, Parmal. Next, another brother, Pransukh, died, without issue, leaving a widow, Musammat Indo. A question having arisen as to the legal effect of the remarriage of Musammat Mulo, the two surviving brothers, Parmal and Gokul, entered into an arrangement by which, in consideration of his being allowed to retain the property of Hazari, Parmal agreed to make no claim against Gokul to the property of Pransukh on the death of his widow Musammat Indo.

* Second Appeal No. 272 of 1917, from a decree of W. T. M. Wright, District Judge of Budaun, dated the 18th of December, 1916, reversing a decree of Gauri Shankar Tewari, Munsif of Budaun East, dated the 5th September, 1916.

(1) (1890) I. L. R., 18 : Calc., 911 : L. R., 18 I. A., 1.

(2) (1911) I. L. R., 34 All., 123.

1919

CHANDU v. PARMAL.

Held that this was a valid agreement and did not offend against the provisions of section 6 (*a*) of the Transfer of Property Act, 1882. *Rani Mewa Kuwar* v. *Rani Hulas Kuwar* (1), *Kanti Chandra Mukerji* v. *Al-i-Nabi* (2), *Nasir-ul-Haq* v. *Faiyaz-ul-Rahman* (3), *Mohammad Hashmat Ali* v. *Kaniz Fatima* (4), and *Barati Lal* v. *Salik Ram* (5), followed *Olati Pulliah Chetti* v. *Varadarajulu Chetti* (6) referred to.

Bajrang Singh v. *Bhagwan Bakhsh Singh* (7) referred to by PIGGOTT, J.

THE facts of the case may be briefly stated as follows :—

There were four brothers, Parmal, Hazari, Gokul and Pransukh. They were separate in estate from each other. Hazari died and was succeeded by his widow, Musammat Mulo. Parmal, the eldest brother, then took her in marriage, such marriages being permissible among the caste to which the parties belonged. Some time later Pransukh died, and his property was inherited by his widow, Musammat Indo. Afterwards a dispute arose between the two surviving brothers, owing to Parmal's control over Musammat Mulo and the property which she had inherited from Hazari and to Gokul's apprehension that he would be deprived of what rights he might have in that property. The dispute was settled by Parmal's agreeing, in favour of Gokul, not to claim any share in Pransukh's property after Musammat Indo's death. Accordingly, Parmal executed, on the 3rd of June, 1897, a registered deed by which he relinquished his rights in the property of Pransukh, stating that he would not have any concern with, and would not put forward any claim to, that property and that the said property would after Musammat Indo's death be deemed to belong to Gokul alone. Musammat Indo died in 1915. Gokul had died in the meantime and his son, the defendant appellant, took possession of Pransukh's property on the death of Musammat Indo. Parmal brought a suit against him claiming the property as being the nearest reversioner. The first court held that the deed of 1897, being a settlement of a family dispute, was binding on the plaintiff, and that, being a deed of relinquishment and not of transfer, it did not offend against the provisions of section 6 (*a*) of the Transfer

(1) (1874) L. R., 1 I. A., 157.
(2) (1911) I. L. R., 33 All., 414.
(3) (1911) I. L. R., 33 All., 457.
(4) (1915) 13 A. L. J.,110.
(5) (1915) I. L. R., 38 All., 107.
(6) (1908) I. L. R., 31 Mad., 474
(7) (1908) 11 Oudh Cases, 301.

1919

CHANDU v. PARMAL.

of Property Act. The plaintiff's suit was, accordingly, dismissed. On appeal, the lower appellate court held that the deed would no doubt be binding on Parmal, if it was legal, but that it was in contravention of the prohibition in section 6 (*a*) and was illegal. The lower appellate court, therefore, decreed the suit. The defendant appealed to the High Court. The appeal was heard by a single Judge and referred by him to a Bench of two Judges.

Mr. *Ibn Ahmad*, for the appellant:—

The case does not come within the purview of section 6 (*a*) of the Transfer of Property Act. What that section aims to prevent is the transfer of a bare possibility of succession, not coupled with any interest in or growing out of any existing property. The present transaction was in the nature of a family settlement. There was no transfer, but only a relinquishment of claim; that is, an agreement not to claim in the event of a certain contingency. This agreement was entered into by way of settlement of family disputes. Such an agreement or arrangement is not obnoxious to the provisions of section 6 (*a*) of the Transfer of Property Act or of any other law. I am supported by the following cases:—*Kanti Chandra Mukerji* v. *Al-i-Nabi* (1), *Nasir-ul-Haq* v. *Faiyaz-ul-Rahman* (2), *Barati Lal* v. *Salik Ram* (3) and *Mohammad Hashmat Ali* v. *Kaniz Fatima* (4). These authorities amply bear out the proposition that there is nothing illegal in a person contracting, by way of settling family disputes, not to claim in the event of his becoming entitled to succeed as reversioner on the decease of a living person.

Mr. *Sham Nath Mushran* (for Munshi *Kamlakanta Varma*, with him Babu *Jogindro Nath Mukerji*), for the respondent:—

The transaction in question is illegal and not binding on the respondent. It has been laid down by the Privy Council and by this High Court that it is not competent for a Hindu reversioner to make a disposition of or to bind his expectant interest;

(1) (1911) I. L. R., 33 All., 414.
(2) (1911) I. L. R., 33 All., 457.
(3) (1915) I. L. R., 38 All., 107.
(4) (1915) 13 A. L. J., 110.

1919

CHAHLU v. PARMAL.

Sham Sundar Lal v. *Achhan Kunwar* (1), *Jagan Nath* v. *Dibbo* (2). The observations in the judgments relating to this question are not confined to mortgages alone ; they discuss the nature of a Hindu's right of reversion and the validity of transactions dealing with it. Not having any vested interest, a Hindu reversioner is quite incompetent to deal with the mere expectancy which he has got. One cannot deal with a thing which is not in him ; that is the principle underlying section 6 (*a*) of the Transfer of Property Act. A transfer or relinquishment by him is inoperative and creates no right. That is further shown by the fact that the transaction does not bind any other reversioners who may come after him. That was laid down in the case of *Bahadur Singh* v. *Mohar Singh* (3). The utmost that may be said is that he may be personally estopped from denying the validity of the transaction; but that has nothing to do with the question as to whether the transaction is itself illegal or not. In order to establish an estoppel it must be shown that there was a representation and that in consequence thereof there was an alteration in the position of the other party. The transaction was not a contract. It was on the face of it a relinquishment in favour of the other party, and it has been held in a similar case that the tranaction amounted to a transfer and was void under section 6 (*a*) of the Transfer of Property Act ; *Dhoorjeti Subbayya* v. *Dhoorjeti Venkayya* (4). If it be taken that the transaction was only a contract, then it was necessary to prove consideration. There is no clear finding of the lower appellate court that there was a genuine family dispute requiring to be settled. Both the ladies were alive at the time of the transaction ; no present rights of the parties could possibly have been in dispute at that time.

Mr. *Ibn Ahmad*, in reply :—

Both courts have found that in fact there was a dispute. As to whether and how far the supposed rights of the parties were well founded in law is an immaterial question.

WALSH, J. :—This appeal must be allowed. The facts are that one Khaman, who died many years ago, left surviving

(1) (1898) I. L. R., 21 All., 71 (80). (3) (1901) I. L. R., 24 All., 94 (107).

(2) (1908) I. L. R., 31 All., 53. (4) (1906) I. L. R., 30 Mad., 201.

him four sons, Parmal, Hazari, Gokul and Pransukh, who divided his property amongst themselves. Hazari, the second son, died first leaving surviving him a widow named Musammat Mulo, who subsequently was married to the eldest son, Parmal. Afterwards Pransukh died without issue, leaving a widow, Musammat Indo. A question having arisen as to the legal effect of the remarriage of Musammat Mulo, the two surviving brothers came to an arrangement by which, in consideration of his being allowed to retain the property of Hazari, Parmal, the present plaintiff, agreed to make no claim against Gokul to the property of Pransukh on the death of the widow, Musammat Indo. This arrangement was drawn up in a deed, dated June, 1897, duly executed and registered. This deed has given rise to the question of law we have to decide. Musammat Indo died in 1913. Parmal brought this suit against the defendant, the son of Gokul, for the share of Pransukh. The defendant set up the agreement of 1897.

The learned District Judge has found that there was a *bonâ fide* dispute and that the agreement, if legal, is binding. So far as this is a finding of fact we are bound by it. As a matter of law the existence of a *bonâ fide* dispute has always been held to be good consideration sufficient to support a contract, even though the claim which caused the dispute turns out afterwards to have had no foundation. In other words, a family compromise or arrangement, as it is generally called in this country, is good as a contract and binding upon the parties to it and their successors, if it is founded upon a *bonâ fide* dispute.

The learned District Judge has dismissed the suit on the ground that the contract amounts to an attempt to transfer the chance of an heir apparent succeeding to an estate, and is therefore illegal under section 6 (*a*) of the Transfer of Property Act. On appeal to this Court our brother RAFIQ referred this question to two Judges, as being one upon which judicial decisions in India have not always been consistent.

Apart altogether from authority, I am unable to agree with the view of the court below. Reading sections 5 and 6 together, it is clear that the latter section does no more than enumerate

1919

CHAHLU v. PARMAL.

Walsh, J.

certain incorporeal, inchoate, or contingent rights which cannot be transferred by an act of conveyance from one person to another. The other rights enumerated in section 6 show that this is so. The section is not one imposing a statutory prohibition against the formation of contracts relating to certain specified subjects, as though, for example, they were contrary to public policy, and therefore forbidden. It merely enacts that a transfer or act of conveyance purporting to pass is ineffectual to pass any interest in these particular rights. The result is that they cannot be assigned either at law, or, to adopt the phraseology of English lawyers, at equity, by an act of transfer. And it follows that an imperfect act of transfer, or an act purporting to transfer rights mentioned in the section, confers no equitable interest upon the transferee such as was recognized by the English Court of Equity. But this does not mean, and in my judgment could never have been intended to mean, that an arrangement or contract supported by good consideration and otherwise binding in equity upon the parties thereto, will not be held binding in equity upon the parties to it merely because one of the results of it is to put one of the parties in the same position as if he had taken a transfer from the person entitled to an inheritance if a transfer could be actually effected.

Suppose, for example, one of two brothers, either of whom may in certain contingencies become entitled to inherit the share of a third, being minded to leave the country and settle in another part of the world, with invested funds, agrees with the other in consideration of a lakh of rupees, which is duly paid to him, not to claim the share of the third brother if eventually it should fall in to him, but to leave the other brother to establish his own right if he can. Such a contract would according to English law, be a good equitable defence, or plea, and an absolute answer to any claim to such inheritance made by the one brother, against the other. It seems to me that the courts in India are bound to apply the rules of equity and good conscience to such an agreement, unless it be against public policy or otherwise expressly forbidden, and that the fact that the formalities of the law of transfer do not allow such an arrangement to be effected by an assignment either in the nature of an act of conveyance or

of an equitable assignment, is not sufficient to justify a negation of the obvious equity of the case. The *transaction* is not aimed at by the Transfer of Property Act ; only the act of conveyance by an express transfer.

Apart, however, from these considerations, the trend of authority in India appears to me to have been in the direction of supporting these transactions by the application of the rule of equity and good conscience to binding contracts or family arrangements which have been wholly performed on one side. In any case, I agree with my brother PIGGOTT, who points out in the judgment he is about to deliver that there is abundant authority in this Court to support this defence and that the learned District Judge was bound to follow those decisions. I refer particularly to the expressions used by their Lordships of the Privy Council in *Rani Mewa Kuwar* v. *Rani Hulas Kuwar* (1), and to the recent decisions of this Court in *Kanti Chandra Mukerji* v. *Al-i-Nabi* (2) ; *Nasir-ul-Haq* v. *Faiyaz-ul-Rahman* (3) ; *Mohammad Hashmat Ali* v. *Kaniz Fatima* (4) ; *Barati Lal* v. *Salik Ram* (5).

The case of *Olati Pulliah Chetti* v. *Varadarajulu Chetti* (6), where an alleged reversioner *admitted* the widow's absolute interest, without expressly relinquishing anything, is a case much in point. It was there held that a compromise cannot be impeached by one of the parties to it on the sole ground that the party whose right is admitted by the compromise had in fact no such right ; that a compromise for valuable consideration cannot be repudiated unless it is shown to be illegal or void ; and that an *admission* does not affect a *transfer* or fall within section 6 (*a*) of the Transfer of Property Act as a transfer of a mere *spes successionis*. As was said in an old English case, *Underwood* v. *Lord Courtown* (7), "It only amounts to this. I give you so much for not seeking to disturb me."

I entirely agree with the view taken in the Madras case, and it seems to me that, whether or not the case of *Sums-ud-din Goolam Husein* v. *Abdul Husein Kalim-ud-din* (8) was

(1) (1874) L. R., 1 I. A., 157.
(2) (1911) I. L. R., 33 All., 414.
(3) (1911) I. L. R., 33 All., 457.
(4) (1915) 13 A. L. J., 110.
(5) (1915) I. L. R., 38 All., 107.
(6) (1908) I. L. R., 31 Mad., 474.
(7) (1804) 2 Sch. and Lef., 41.
(8) (1906) I. L. R., 31 Bom., 165

1919

CHAHLU v. PARMAL.

rightly decided, the *dictum* of the CHIEF JUSTICE cited in the head note as to section 6 (*a*) not perpetuating in India the distinction between what are known in England as assignments at law, and assignments in equity, is in the nature of a trap, and has led to much misconception. An arrangement of the kind relied upon by the defendant in this case is set up as an equitable defence; it does not purport to be a transfer, or equitable assignment.

PIGGOTT, J.:—The learned District Judge has found that the agreement of the 3rd of June, 1897, "if legal, is binding on the plaintiff." He quotes authority of the Bombay High Court *Sums-ud-din Goolam Husein* v. *Abdul Husein Kalim-ud-din* (1) in support of his finding that the agreement in question amounts in effect to the transfer of the chance of succession to an estate, and cannot be enforced against the plaintiff so as to prevent him from claiming property which has devolved upon him under the ordinary Hindu law of inheritance. I have myself referred to a case in which the same view was taken, on a state of facts much stronger against the plaintiff than those now before us, by the late CHIEF JUSTICE of the Patna High Court when Judicial Commissioner of Oudh—*Bajrang Singh* v. *Bhagwan Baksh Singh* (2). If the matter were *res integra* in this Court I should have preferred to follow that decision, adopting the reasoning of Sir EDWARD CHAMIER. There is, however, clear authority of this Court, the other way, which the lower appellate court was bound to follow. I cannot take this case out of the operation of the principle enunciated by the learned Judges who decided the case of *Mohammad Hashmat Ali* v. *Kaniz Fatima* (3). It is true this decision has not been reproduced in the authorized reports; but it has been founded upon and approved in *Barati Lal* v. *Salik Ram* (4). So long as this Court continues to refer to unauthorized reports, it practically lays upon courts subordinate to it the burden of doing the same. I may say that I should myself have concurred in the decision in *Mohammad Hashmat Ali* v. *Kaniz Fatima* (3) on the ground that in that case all defects of title were covered by the decree of a competent court

(1) (1906) I. L. R., 31 Bom., 165.
(2) (1908) 11 Oudh Cases, 301.
(3) (1915) 13 A. L. J., 110.
(4) (1915) I. L. R., 38 All., 107.

1919

CHAHLU v. FARMAL.

binding on the parties, but the case was not decided on this ground. The learned Judges distinctly held that it is competent for a person to contract not to claim an inheritance, in the event of his becoming entitled to it on the death of a living person. There are older authorities of this Court pointing in the same direction to be found in the eighth volume of the Allahabad Law Journal Reports. I think the court below was bound to follow the authority of this Court, and I therefore concur in setting aside the decree of the lower appellate court and restoring that of the court of first instance. The appellant must get his costs throughout.

BY THE COURT.—The order of the Court is that the decree of the lower appellate court be set aside, and the decree of the first court restored. The appellant must get all the costs.

Appeal decreed.

Before Mr. Justice Walsh and Mr. Justice Stuart.

PIARI LAL (APPLICANT) *v.* THE MUIR MILLS COMPANY, LIMITED, CAWNPORE (OPPOSITE PARTY).*

1919
May, 6.

Act No. VII of 1913 *(Indian Companies Act), section* 38—*Shares purchased by the father of a Joint Hindu family and registered in his name—Death of father—Managing member entitled to registration.*

Where shares in a joint stock company have been purchased by the father of a joint Hindu family out of the joint family funds and registered in his name, the person entitled on the death of the father to be registered in the books of the company as owner of such shares is the managing member of the family.

ONE Sheomukh Rai, who was the holder of 80 shares in the Muir Mills Company, Ld., Cawnpore, died leaving him surviving a son, Piari Lal, and a minor grandson. The company, apparently not wishing to decide who, after the death of Sheomukh Rai was entitled to be registered as owner of these shares, left it to the parties interested to make an application under section 38 of the Indian Companies Act, 1918. This was accordingly done by Piari Lal.

Munshi *Panna Lal*, for the applicant.

Mr. *May Arrindell*, for the opposite party.

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* First Appeal No. 36 of 1919, from an order of E. H. Ashworth, District Judge of Cawnpore, dated the 15th of November, 1918.