

certainly right and just that he should be able, against a person who has no title and is a mere wrong-doer, to obtain a declaration of title as owner, and an injunction to restrain the wrong-doer from interfering with his possession. The Appellate Court, in accordance with the judgment above quoted, has dismissed the suit. Consequently, the defendant may continue to wilfully, improperly, and illegally interfere with the plaintiff's possession, as the learned Judges say he has done, and the plaintiff has no remedy. Their Lordships are of opinion that the suit should not have been dismissed; and that the plaintiff was entitled in it to a declaration of his title to the land. It was not necessary for him to negative that the land was dedicated to religious or charitable purposes, a question upon which the Original and Appellate Court have differed, and which, as the only defendant was not entitled to maintain the *wakfnama*, and other persons would not be bound by an adverse decision, their Lordships do not decide. That declaration should be omitted from the decree. Their Lordships will humbly advise Her Majesty to reverse the decree of the Appellate Court, and order the defendant to pay the costs of the appeal to that Court, and to affirm the decree of Mr. Justice Trevelyan, substituting for the words "the sole and absolute owner"—"lawfully entitled to possession," and after the words "in the plaint mentioned," omitting "and that the same have not been dedicated for religious or charitable purposes." The respondent will pay the costs of this appeal.

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Appeal allowed.

Solicitors for the appellant: Messrs. T. L. Wilson & Co

C. B.

RAGHUNATH AND ANOTHER (REPRESENTATIVES OF THE PLAINTIFF) v.
 NIL KANTH AND OTHERS (DEFENDANTS).

P.O.*
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[On appeal from the Court of the Judicial Commissioner of Oudh.]

January 30,
 February 25.

*Champerty—Agreement to share property the subject of suit—Claim
 for payment for work done and expenses properly incurred.*

The English law of champerty is not in force in India. Agreements made by claimants of property in litigation to share it with others on their

* Present:—LORDS WATSON, HOBHOUSE, MACNAGHTEN, and MORRIS, and SIR R. COUCH.

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obtaining decrees in consideration of funds being supplied by the latter for carrying on their suits, are not in themselves opposed to public policy, nor are they necessarily void. But such agreements, when extortionate are inequitable; and in that case should not receive effect. Although the present suit failed for this last reason, still reasonable compensation, under the claim for general relief for work done and expense properly incurred, could be awarded, as it had been by the Appellate Court below.

APPEAL from a decree (24th April 1888) of the Judicial Commissioner, varying a decree (30th November 1886) of the District Judge of Sitapur.

The suit out of which this appeal arose was brought by Kunwar Ram Lal, now represented by the appellants, on an agreement to obtain proprietary possession of 6 $\frac{3}{4}$ th annas share in some villages in the Kheri district. To this property the defendants together with Hira Lal had become entitled in 1882, as heirs of one Basant Singh. In order to obtain the recognition by the revenue authorities and the Government, of their claim to succeed against other supposed claimants, the defendants, with Hira Lal, employed Kunwar Ram Lal, making on the 3rd November 1882 the agreement on which this suit was brought. The agreement was that when Nil Kanth and the other claimants should have been put into possession of the property, they would, in consideration of the expense incurred by Kunwar Ram Lal, and his exertions in their cause, convey to him by sale deed a 9-annas share. It was alleged in the plaint that Hira Lal had performed his part of the agreement, but that the defendants had refused to perform their part.

The agreement recited that the Government had taken possession of the estate of Basant Singh, and many claimants stood in the way of the promisors' legal rights, continuing (as translated) thus:—

“Whereas Kunwar Ram Lal has taken upon himself the liability to pay all expenses, the prosecution and conduct of suit in its course from the Miscellaneous Revenue Side up to the Civil Court, therefore we, the promisors, agree in writing that as soon as we, or any of us, are put in possession of the property, either from the Revenue Department, or Civil Court, we shall immediately sell outright to the said Kunwar Sahib, his heirs and representatives, 9-annas share (*hakikat*) of the entire estate, in lieu of the expenses to be incurred by him, and his exertions, and prosecution of the suit, by duly executing a separate sale deed.”

The defendants did not deny the execution of the agreement, but contended that it was obtained from them by fraud and undue influence, and that there was no opposition to their claim, so that there had been no consideration adequate to their promise. At the hearing it was shown that Kunwar Ram Lal had paid Bansi Lal, the vakil, who appeared for the claimants, Rs. 5,500.

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The District Judge dismissed the suit with costs. He was of opinion that, though the defendants might have given their consent freely to the agreement, they had been led to believe that their legal expenses would be approximately an equivalent to the value of the share which they agreed to transfer. He found that the consideration which the defendants had expected to be given was not given; but the expenditure had been mere waste on the part of Kunwar Ram Lal, not having been required for the occasion; and that little work had been done, not much having been necessary.

The Judicial Commissioner varied the decree of the first Court by awarding to the appellant the sum of Rs. 1,000, with proportionate costs; but refused to decree specific performance of the agreement. He considered that Kunwar Ram Lal, in obtaining the execution of the agreement, had taken advantage of the defendants' ignorance; and that he, although bound to disclose to them the real state of the case, had misrepresented it; making out that the claim was contested, and precarious. Accordingly, save as to the extent above stated, he affirmed the judgment of the first Court.

Mr. J. D. Mayne, for the appellant, argued against the view that an extortionate bargain had been attempted, and referred to *Ramcoomar Coondoo v. Chunder Canto Mookerjee* (1) as showing that the English law of champerty was inapplicable.

The respondents did not appear.

Their Lordships' judgment was delivered by

LORD MORRIS:—This case comes on appeal from the Judicial Commissioner of Oudh, and the respondents have not appeared to defend it. It is a claim by Kunwar Ram Lal, the predecessor of the appellants, to have a sale deed executed and for delivery of proprietary possession of $6\frac{1}{2}$ annas share of certain villages.

(1) I. L. R., 2 Calc., 233; L. R., 4 I. A., 23.

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It appears that one Basant had been the grantee of and in possession of the property in question, and that on his death his widow, Mussumat Maikan, became the possessor. She died in 1882; on her death one Hira Lal, who was the first cousin of Basant, claimed the property; the first respondent Nil Kanth, the father of Mussumat Maikan, also claimed. In October 1882 certain persons petitioned the Government, alleging that they were old hereditary zemindars of part of the property, and praying to be restored to the possession of it. That petition was rejected on the 8th of December 1882, and possession was given by the Government to Nil Kanth and Hira Lal, who had agreed to divide the property in the proportion of $4\frac{1}{2}$ annas to Hira Lal and the remaining $11\frac{5}{7}$ annas to Nil Kanth and other relatives of Mussumat Maikan. The plaintiff in this suit sought to enforce against Nil Kanth and other relatives of Mussumat Maikan an agreement dated 3rd November 1882; Hira Lal, one of the parties to the agreement, not being made a defendant to the suit on the ground that he was alleged to have performed his part of the agreement. The agreement provided that, in consideration of the plaintiff having taken upon himself the liability to pay all expenses of the prosecution of the suit of the defendants and Hira Lal to get possession of the property, they agreed with him that as soon as they were put in possession they would sell to him a 9-annas share of the property, in lieu of and in consideration of the expenses to be incurred by the plaintiff in the prosecution of the case. This agreement was signed by the defendants and Hira Lal.

The District Judge dismissed the plaintiff's claim, on the ground that the agreement was unfair, that the defendants were misled into the belief that the expenses would be approximately equivalent to the value of the share agreed to be transferred, and consequently that it would be against public policy to enforce it. The Judicial Commissioner, on appeal, arrived at the same conclusion, but under the prayer for general relief in the petition of plaint he awarded the plaintiff a thousand rupees as compensation for any expenses legitimately incurred by him.

The English law of champerty is not in force in India, and documents which set up agreements to share the subject of litigation if recovered, in consideration of supplying funds to carry

it on, are not in themselves opposed to public policy; but such documents should be jealously scanned, and when found to be extortionate and unconscionable, they are inequitable as against the party against whom relief is sought, and effect should not be given to them. The plaintiff in this suit was a money-lender, and was dealing with illiterate persons; he must have represented to them the likelihood and the necessity of extensive litigation, a representation unwarranted by the facts; further, the fee paid to the vakil, Bansi Lal, was most excessive, and disproportionate to any work likely to be done by him.

No evidence was given that the assertion made in the agreement of the 3rd of November, to the effect that to recover possession for the defendants would require large sums of money, was true, or that the plaintiff had any ground for believing it to be true. In fact, the proceedings were brief and simple. The widow died on the 27th September 1882; the zemindars' claims were rejected on the 8th of December; the controversy between the widow's heirs and her husband's was settled by agreement before the 3rd of November, and the parties were put into possession in December. In such circumstances their Lordships concur with the view of the transaction taken by the District Judge and the Judicial Commissioner. Their Lordships will therefore humbly advise Her Majesty that the appeal be dismissed.

Appeal dismissed.

Solicitors for the appellants:—Messrs. *Young, Jackson, and Beard.*

C. B.

NILMONI SINGH DEO BAHADUR (PLAINTIFF) v. KIRTI
CHUNDER CHOWDERY, (DEFENDANT.)

[On appeal from the High Court at Calcutta.]

Onus Probandi—Concurrent findings of fact—Evidence as to liability to account—Inferences of fact—Concurrent findings by two Courts below, not influenced by precisely the same considerations, upon the same evidence.

In 1884 a deed of release exonerating an agent from liability to account was executed by his principal, stating that there had been a settlement

* *Present* :—LORD WATSON, LORD MORRIS and SIR R. COUCH.

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