APPELLATE CIVIL.

Before Mr. Justice Scott-Smith and Mr. Justice Martineau,

1919

May 16.

INDAR SINGH (DEFENDANT)—*Appellant*,

versus

MUNSHI (PLANTIFF) AND BHAGWAN SINGH AND ANOTHER (DEFENDANTS)—*Respondents*,

Civil Appeal No. 3036 of 1915.

Champerty—agreement to hand over half of the land in dispute to the person who had agreed to supply funds for the litigation—whether compulsorily registrable and whether void by reason of being champertous—Indian Registration Act, III of 1877, section 17 (2) (*h*)

THE collaterals of one H. S. intended to sue H. S. and two donees to each of whom he had gifted half of his land, and entered into an unregistered agreement dated 9th October 1888, whereby they undertook to hand over half the land to one I. S., defendant-appellant, on condition of his suppling funds for the litigation necessary to set aside the gifts. Suits were then brought and were successful and on 12th September 1901, a second agreement was executed and registered, confirming the first one. H. S. died subsequently and some time after his death I. S. obtained possession of the share agreed to be given to him, *i.e.*, at least seven years before the present suit was brought by M., the son of one of the executants of the agreements, on the ground that the land had been sold by his father without any consideration or necessity.

Held, that as the agreement was in the nature of an agreement to transfer rights in property which could only come into existence after H. S.'s death its registration as such was not compulsory, *vide* Indian Registration Act, section 17 (2) (*h*).

Imam Bakhsh Khan v. *Kasim Shah* (1) and *Shridhar Ballal* v. *Chintaman* (2) following *Chunilal-Panalal* v. *Bomanji* (3) and *Partab Singh* v. *Karm Chand* (4), referred to.

Jhandu Khan v, *Barkhurdar* (5), not followed.

Held also, that the English law of Champerty is not in force in India and that fair agreements to share property in litigation with others in consideration of their suppling the funds for carrying on suits are not opposed to public policy and that such agreements should receive effect except when extortionate or inequitable.

Raghunath v. *Nil Kanth* (6) and *Raja Mohkam Singh* v. *Raja Rup Singh* (7), followed.

(1) 16 P. R. 1895.
(2) (1893) I. L. R. 18 Bom. 396.
(3) (1883) I. L. R. 7 Bom. 310.
(4) 184 P. R. 1889 F. B.
(5) 150 P. R. 1889.
(6) (1893) I. L. R. 20 Cal. 843 P. C.
(7) (1893) I. L. R. 15 All. 35 P. C.

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Second appeal from the decree of W. deM. Malan, Esquire, District Judge, Jullundur, dated the 2nd August 1915, reversing that of Sheikh Nasir-ud-Din, Subordinate Judge, 1st Class, Jullundur, dated the 15th November 1914, dismissing the claim.

MUHAMMAD SHAFI, for *Appellant.*

NAND LAL, for *Respondents.*

The judgment of the Court was delivered by—

SCOTT-SMITH, J.—The facts of the case out of which this second appeal arises are fully and clearly stated in the judgment of the Lower Appellate Court and we need not report them at length. Briefly they are as follows :—Hamir Singh gifted half his land to his step-son, Ram Singh, and half to one Kura, Jat. On the 9th of October 1888 his reversioners, Sundar Singh, Haku and Bhagwan Singh, executed an unregistered agreement whereby they undertook to hand over half the land to Indar Singh, defendant-appellant, on condition of his supplying funds for the litigation necessary to set aside the gifts. Suits were then brought and were successful, and on the 12th of September 1901 a second agreement was executed and registered, confirming the first one. Hamir Singh died some 12 years before suit and some time thereafter Indar Singh obtained possession of the share agreed to be given to him. He had admittedly been in possession for some seven years before the present suit was brought by Munshi, son of Sundar Singh, one of the executant of the agreements. He brought the suit on the ground that the land had been sold by his father without any consideration or necessity. The first Court dismissed the plaintiff's suit, holding that the agreements were valid and had been duly carried out and that Indar Singh had performed his part of the bargain by supplying funds for the litigation. The learned District Judge on appeal decreed the plaintiff's suit. He held that the original agreement of the 9th of October 1888 required registration and that, therefore the plaintiff, who was born after its execution but before the execution of the second agreement, could contest the alienation. He further found that there was no proof of the amount spent by Indar Singh on the suits brought with

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his assistance. He considered that the agreements were champertous and that Indar Singh took an undue advantage of the executants thereof who were in straitened circumstances. He also laid stress upon the fact that Indar Singh must have known that the land would subsequently increase in value and said that the bargain was altogether an unfair one According to the pedigree-table Bhagwan Singh would be entitled to half of the land in suit and Sundar Singh to the other half and though Bhagwan Singh did not join in bringing the present suit, the District Judge gave Munshi a decree for the whole land claimed, being of opinion that as Bhagwan Singh had failed to press his rights, he might be held to have waived them in favour of the plaintiff.

Mr. Muhammad Shafi on behalf of Indar Singh has filed a second appeal in this Court, and the first point urged by him is that the agreement of the 9th of October 1888 did not require registration, because in the words of section 17 (2) (h) of the Registration Act, it did not itself create or declare any right, title or interest in the land, but merely created a right to obtain another document which would, when executed, create such right. *Jhandu Khan* v. *Barkhurdar* (1) quoted by the learned District Judge is no doubt an authority in support of his decision, but the judgment is a very short one and has not been followed in the subsequent decisions of the Chief Court. At the time when the agreement was entered into, the executants were not entitled to any part of Hamir Singh's property. They had merely reversionary rights therein and reversionary rights cannot be alienated. The executants' rights in the property were only to come into existence after Hamir Singh's death and the agreement was to transfer a moiety of such rights when they came into existence, *i. e.*, after the death of Hamir Singh. The agreement was in the nature of an agreement to transfer and its registration as such is not compulsory. (*Imam Bakhsh Khan* v. *Karim Shah* (2), *Shridhar Ballal* v. *Chintaman* (3) following *Chunilal Panalal* v. *Bomanji* (4) and *Partab Singh* v. *Karm Chand* (5)). It is, however, unnecessary to labour

(1) 150 P. R. 1889.
(2) 16 P. R. 1895.
(3) (1893) I. L. R. 18 Bom. 396.
(4) (1883) I. L. R. 7 Bom. 310.
(5) 131 P. R. 1889 F.B.

this point further, because Dr. Nand Lal on behalf of the respondent frankly admitted that the agreement of 188? did not require registration because it did not itself create any rights at all. We, therefore, hold that the agreement, which was executed before the birth of the plaintiff, cannot be objected to by him.

As regards the question of champerty, it was held by their Lordships of the Privy Council in *Raghunath* v. *Nil Kanth* (1) that the English law of champerty was not in force in India and that fair agreements made by claimants of property in litigation to share it with others on their obtaining decrees in consideration of funds being supplied by the latter for carrying on their suits were not in themselves opposed to public policy, nor were they necessarily void, but that such agreements, when extortionate, were inequitable and in that case should not receive effect. Another Privy Council case to the same effect is *Raja Mohkam Singh* v. *Raja Rup Singh* (2).

Now, in the present case it has been proved that Indar Singh supplied money for the carrying on of the litigation by which Sunder Singh, Haku and Bhagwan Singh got the gifts made by Hamir Singh cancelled. The learned District Judge says that there is no proof of the amount spent by Indar Singh on the suits brought with his assistance, but we do not think that he should be called upon to prove how much he advanced : *prima facie* there was nothing unfair about the agreement. The learned District Judge says that Indar Singh must have known that the value of the land would increase and that, therefore, he derived an unfair advantage. We are unable to agree with him in this. What had to be looked at was the actual value of the land at the time when the agreement was made, and we see no reason to suppose that Indar Singh derived any unfair advantage. Moreover, the agreement was entered into before the birth of the plaintiff and was duly given effect to after the death of Hamir Singh, Indar Singh obtaining possession of the land, and in the circumstances we do not see how the plaintiff can contest the consideration for the agreement. The transfer of the land to Indar Singh was the natural result of the

(1) (1893) I. L. R. 20 Cal. 843 P. C. (2) (1893) I. L. R. 15 All. 352 P. C.

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agreement of 1888 which having been entered into by all Hamir Singh's reversioners cannot be objected to by the plaintiff who was subsequently born.

We, therefore, accept the appeal and, setting aside the order of the lower appellate Court, restore the decree of the first Court, dismissing the plaintiff's claim with costs throughout.

Appeal accepted.

APPELLATE CIVIL.

Before Mr. Justice Scott-Smith and Mr. Justice Martineau.

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HIRA AND ANOTHER (DEFENDANTS), *Appellants*,

versus

BUTA (PLAINTIFF), AND BHUDHU, ETC., (DEFENDANTS), *Respondents.*

Civil Appeal No. 2516 of 1915.

Hindu Law—whether an after-born son divests his mother's estate as a widow, from the date of his birth or from the date of his father's death.

The house and site in dispute belonged to the plaintiff's father *T*, a Hindu, who died in May 1911. On the following July the property was sold by *T's* widow R. The plaintiff who was born to *R* five days after the sale, sued to contest its validity. The first Court decreed the claim, holding that the plaintiff was in contemplation of law actually existing at the time of his father's death, that at the time of the sale he, and not his mother, was the owner of the property, and that, therefore, the sale by the latter was void. The decree was upheld by the District Judge on appeal.

Held, on second appeal that the rights of a son under Hindu Law in the estate left by his father commence at birth and not before, and that *R* was consequently at the date of the sale competent to alienate the property for necessity.

Bamundoss Mookerjea, v. *Mussammat Tarinee* (1), followed. Mayne's Hindu Law, 8th Edition, page 499, and West and Buhler's Digest of Hindu Law, 3rd Edition, volume I, page 803, referred to.

Jatindra Mohan v. *Ganendra Mohan* (2), *Mussammat Mangli*, v. *Sobha Singh* (3), *Minakshi* v *Virappa* (4), and *Ramakrishna* v. *Tripurabai* (5), distinguished; *Sabapathi* v. *Somasundaram* (6), and *Hanmant Ramachandra* v. *Bhimacharya* (7), not followed.

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(1) (1858) 7 Moo. I. A. 169 P. C.
(2) (1872) 9 Beng. L. R. 377 P. C.
(3) (1913) 20 Indian Cases 272.
(4) (1884) I. L. R. 8 Mad. 89.
(5) (1908) I. L. R. 33 Bom. 88.
(6) (1892) I. L. R. 16 Mad. 76.
(7) (1887) I. L. R. 12 Bom. 105.