

does not derive her title from a common ancestor. She, therefore, represents her father and his estate in her hands is liable for his debts. I would, therefore, accept this appeal with costs and remand the case to the Court below for such further action as may be necessary.

FFORDE J.—I agree.

N. F. E.

1926  
 CHAMAN RAM  
 v.  
 MST. SABAL.  
 BROADWAY J.

FFORDE J.

*Appeal accepted.*

**APPELLATE CIVIL.**

*Before Mr. Justice Harrison and Mr. Justice Dalip Singh.*

ABDUL RAHMAN (PLAINTIFF) Appellant

*versus*

GHULAM MUHAMMAD AND OTHERS

(DEFENDANTS) Respondents.

Civil Appeal No. 1421 of 1922.

*Indian Contract Act, IX of 1872, section 23—Purchase of land by a Patwari in his own circle—opposed to public policy.*

*Held*, that it was unnecessary to decide whether the rules of the Financial Commissioner, framed under section 28 of the Punjab Land Revenue Act, debarring a Patwari from acquiring land in the village to which he is appointed, are *ultra vires* or *intra vires*, as it is clear that it would be detrimental to the due performance of the duties of a Patwari if he were allowed to become a landlord in the circle in which he is serving, and therefore the sale of land to the Patwari in this case was void, as being opposed to public policy—*vide* section 23 of the Indian Contract Act.

*Kerakoose v. Serle* (1), referred to.

*Bhagwan Dei v. Murari Lal* (2), differed from.

*Dhirendra Kumar v. Chandra Kanta* (3), distinguished.

*Shiam Lal v. Chhaki Lal* (4) and *Sheo Narain v. Mata Prasad* (5), overruled by *Bhagwan Dei v. Murari Lal* (2),

(1) (1844) 3 Moo. I.A. 329, 346 (P.C.). (3) (1922) 68 I. C. 648.

(2) (1916) I. L. R. 39 All. 51 (F.B.). (4) (1900) I. L. R. 22 All. 220.

(5) (1905) I. L. R. 27 All. 73.

1926

May 10

1926  
 ———  
 'ABDUL  
 RAHMAN  
 v.  
 GHULAM  
 MUHAMMAD.

*Kamala Devi v. Gur Dayal* (1) and *Balkissen v. Debi Singh* (2), referred to.

*Second appeal from the decree of O. F. Lumsden, Esquire, Additional District Judge, Lahore, dated the 2nd May 1922, affirming that of Sayad Muhammad Abdullah, Munsif, 1st class, Kasur, District Lahore, dated the 24th January 1922, dismissing the claim.*

TIRATH RAM and ASGHAR BEG, for Appellant.

TARA SINGH, for Respondents.

The judgment of the Court was delivered by—

DALIP SINGH J.—The facts of this appeal are briefly as follows:—

The land in suit was originally owned by one Khushi Ram jointly with others. He is alleged to have sold his share for Rs. 600 to Muhammad Husain, the then Patwari in the village, and his brother Hassan Muhammad. The mutation was refused by the revenue authorities. Subsequently Muhammad Husain sold his share to the present plaintiff-appellant and the revenue authorities sanctioned this mutation. Thereafter the present plaintiff brought this suit for possession of the land alleging that the defendants had taken forcible possession of a portion of the land sold to him.

The trial Court dismissed the suit holding that, under the rules framed by the Financial Commissioner under section 28 of the Punjab Land Revenue Act, XVIII of 1887, a Patwari was debarred from acquiring land in the village to which he is appointed (*vide* Standing Order No. 15, paragraph (9)). It held that this rule had the force of law and the sale in favour of the Patwari was, therefore, forbidden by

law, and the sale itself was, therefore, void under section 23 of the Indian Contract Act.

The trial Court further held that there was no consideration for the sale to the Patwari and that it had been effected with the object of winning the Patwari's favour. It relied on two rulings, *Shiam Lal v. Chhaki Lal* (1) and *Sheo Nardin v. Mata Prasad* (2).

The lower appellate Court dismissed the appeal holding that the rules had the force of law and that, even if they had not the force of law, the contract was opposed to public policy under section 23 of the Indian Contract Act. The lower appellate Court also relied on the Allahabad rulings quoted above. No other point was decided.

In second appeal the appellant has contended that the two Allahabad rulings have been overruled by a Full Bench decision of the same High Court reported as *Bhagwan Devi v. Murari Lal* (3). He has also referred to *Kamala Devi v. Gur Dayal* (4), another Full Bench decision, *Dhirendra Kumar v. Chandra Kanta* (5), a Calcutta ruling, and to *Balkissen v. Debi Singh* (6), a ruling of the Nagpur Judicial Commissioner.

The respondent has relied on *Kerakoose v. Serle* (7) and on various other rulings which, however, need not be mentioned as the facts in those rulings were quite different.

It is unnecessary for us to decide whether the rules framed under section 28 are *ultra vires* or *intra vires* of the Financial Commissioner or whether they

1926

ABDUL  
RAHMAN

v.

GHULAM  
MUHAMMAD.

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

(4) (1916) I. L. R. 39 All. 58 (F.B.).

(2) (1905) I. L. R. 27 All. 73.

(5) (1922) 68 I. C. 648.

(3) (1916) I. L. R. 39 All. 51 (F.B.). (6) (1919) 52 I. C. 153.

(7) (1844) 3 Moo. I. A. 329, 346 (P.C.).

1926

ABDUL  
RAHMAN  
v.  
GHULAM  
MUHAMMAD.

have the force of law or not, as we consider that the appeal can be disposed of on the ground that the contract is opposed to public policy. It is obvious that it would be most detrimental to the due performance of the duties of a Patwari if he were allowed to become a landlord in the circle in which he is serving. The Patwari is concerned with maintaining a true and accurate record of rights of agricultural land in that circle and also in maintaining an accurate record of the fact of possession of agricultural land. It follows, therefore, that if he himself is an owner of land in that circle it is likely that his interest may conflict with his duties. With all respect to the Full Bench decision in *Bhagwan Dei v. Murali Lal* (1), we are unable to agree with the reasoning thereof. Mr. Justice Walsh in that ruling points out that there is a distinction between the subject matter of the contract and the conduct of the party entering into the contract and that it is only the former question which should be considered in applying section 23 of the Indian Contract Act. In *Kerakoose v. Serle* (2) the Privy Council held that it was contrary to public policy to appoint the Registrar of the High Court to present bills on behalf of infants for accounts of their estates on the sole ground that such an appointment was likely to conflict with the duties of the Registrar because the Registrar derived a benefit from all monies paid into Court. Counsel for the appellant contends that this ruling can be distinguished because the commission paid to the Registrar was a secret one, and he concedes that unless this is so the ruling is not distinguishable. The commission as a matter of fact was paid according to the practice of the Supreme Court as pointed out in that ruling. There was,

(1) (1916) I.L.R. 39 All. 51 (F.B.). (2) (1844) 3 Moo. I.A. 329, 346 (P.C.)

therefore, no question of secrecy about it. Now, as pointed out by the Privy Council in that case, the object of appointing the Registrar was a laudable one but it was the fact that the Registrar was an official of the Court which made the appointment a bad one. Therefore the distinction drawn by Mr. Justice Walsh in the Allahabad case seems not to have been approved of by the Privy Council. In *Dhirendra Kumar v. Chandra Kanta* (1), the question arose under the Government Servants Conduct Rules. In our opinion that is a totally different matter, because a Government servant is not absolutely prohibited from acquiring land nor does it necessarily follow that if he does so acquire land his duties will conflict with his interest. The case of a Patwari acquiring agricultural land in his own circle stands, it seems to us, on a wholly different footing. We hold that the only object of the agreement was the acquisition of land by the Patwari and in the nature of things this would tend to injure the public service.

We, therefore, dismiss this appeal, but, in view of the fact that the appellant had some justification in filing his second appeal and, as pointed out in the Calcutta ruling, the matter has been the subject of conflict of authority, we do not allow respondent his costs.

C. H. O.

*Appeal dismissed.*

---

(1) (1922) 68 I. C. 648.

1926

ABDUL  
RAHMAN  
v.  
GHULAM  
MUHAMMAD.