APPELLATE CIVIL.

Before Hon'ble E. H. Goodman Roberts, Chief Justice, and Mr. Justice Bagnley.

1936

May 28.

KALIMUTHU *v.* MAUNG THA DIN.*

Champertous agreement—Enforceability in India—Public policy—Conditions vitiating agreement—Examination of agreement—Inadequacy of consideration—Bad bargain by one party—Grounds for setting aside contract.

A fair agreement for the acquisition of an interest in the subject of litigation *bona fide* entered into is not *per se* opposed to public policy in India. To make a champertous agreement void there must be something against good policy and justice, something tending to promote unnecessary litigation, something that in a legal sense is immoral, and to the constitution of which a bad motive is in the same sense necessary.

It is however necessary to examine champertous agreements, the circumstances in which they are made, and, possibly, also the consideration given; but mere inadequacy of consideration is not sufficient to enable the Court to set aside a contract of this description on the ground that it is against public policy. Where the inadequacy of consideration is so glaring and the circumstances surrounding the contract are so suspicious as to lead the Court to the view, not that one of the parties has made a bad bargain merely, but that one of the parties must have been imposed upon and taken advantage of by a person who had better means of knowledge than he himself possessed, the contract may be set aside.

Chedambara Chetty v. *Naicker*, 1 I.A. 241; *Fischer* v. *Kamala Naicker*, 8 M.I.A. 170; *Ram Coomar Coondoo* v. *Chunder Canto Mookerjee*, 4 I.A. 23; *Tennet* v. *Tennet*, 2 H.L.C. 6—*followed*.

K. C. Sanyal for the appellant (respondent in Civil Ap. No. 5). The agreement is opposed to public policy. It is of a champertous character and payment could only be claimed if the promisor was successful in his litigation. The plaintiff claims an exorbitant sum for his services. Beyond engaging advocates, handing them the briefs and attending in Court he had done nothing else to deserve the large sum he claims.

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* Civil First Appeal No. 195 of 1935 and Civil First Appeal No. 5 of 1936 from the judgment of the District Court of Thatôn.

[GOODMAN ROBERTS, C.J. You have to show that the agreement is extortionate as well as champertous ; the Court cannot consider whether the remuneration is excessive unless the whole contract is unconscionable.]

The excessive amount mentioned in the agreement for the kind of services rendered is in itself the criterion. The will was declared a forgery by the District Court and over this the defendant was greatly perturbed in his mind ; it was at this juncture that the plaintiff got him to execute the agreement. Even the sum of Rs. 1,000 awarded to him by the District Court is excessive. It was a case of speculation in litigation, for the remuneration depended on the result of the case, an uncertain event. If it was a contract of service, he ought to have his remuneration in any event.

Dayabhai v. *Lakhmichand* (1) ; *Sir E. Sassoon* v. *Tokersey* (2) ; *Ram Coomar Coondoo* v. *Mookerjee* (3) ; *Raghunath* v. *Nil Kanth* (4) ; *Kunwar Ram Lal* v. *Nil Kanth* (5).

Hay for the respondent (appellant in Ap. No. 5). The agreement though champertous is fair and in furtherance of right and justice and is not opposed to public policy. The plaintiff had performed his part of the agreement and it was no answer to his claim that the labour and duty in consideration of which the defendant agreed to pay a specified sum did not turn out to be of the value assigned to it at the time of the bargain. Adequacy of consideration is a matter for the contracting parties and the Court will only

(1) I.L.R. 9 Bom. 358.
(2) I.L.R. 28 Bom. 616.
(3) 4 I.A. 23.
(4) I.L.R. 20 Cal. 843.
(5) 20 I.A. 112.

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take it into account in determining a question of fraud or imposition. During the long period of litigation the defendant made full use of the plaintiff and never suggested that he was led into the agreement by the fraud or undue influence of the plaintiff. The contract was for a fixed sum and there being nothing extortionate or unconscionable about it the plaintiff was entitled to the full amount for which the parties stipulated.

GOODMAN ROBERTS, C.J.—This is an appeal by one Kalimuthu, who is a trader of Thatôn, against an order of the Additional District Judge of Thatôn awarding the plaintiff, Maung Tha Din, a sum of Rs. 1,000 under an agreement made on the 22nd February 1932 in the following circumstances. Kalimuthu was interested in the testamentary dispositions of one Arunachelam Chettyar and set up a will of the Chettyar in the District Court. A decision was given against him upon the ground that the will did not bear the testator's genuine signature and, in these circumstances, he was in great financial difficulty, and he desired to appeal. He did not know English and felt himself unable to come to Rangoon and to spend the time necessary for giving instructions to advocates and pay attention to the details of his business there. In those circumstances, according to the evidence, Tha Din and other persons approached him and offered to assist him in his suit. They all asked for varying amounts, and in the result, so far as Tha Din was concerned, Kalimuthu entered into an agreement, dated the 22nd February 1932, by which he appointed Tha Din to act for and represent him in the High Court of Judicature at Rangoon and also, if necessary, in the District Court. Thatôn.

at the sacrifice of his time, labour and own business. Tha Din, by virtue of the agreement, was to give proper instructions to the lawyer or lawyers who might be retained and to attend to Kalimuthu's business in preference to his own private matters. As soon as the suit was successful, either by a decision of the Court or otherwise by compromise or settlement in or out of Court, Tha Din was to be remunerated by payment of Rs. 7,500 by way of *bukshis* for the trouble he took on behalf of Kalimuthu. In the event of Tha Din neglecting the duties which he undertook he was to forfeit all right to any payment; nor was he to have the right to claim payment in the event of Kalimuthu losing his suit. There is also a cross-appeal by Maung Tha Din against Kalimuthu, in which he contends that he is entitled to be paid the full sum due under the agreement. The short point for this Court is whether the Additional District Judge was right in the view which he took of that agreement. It was urged before us that the agreement was void as against public policy and the leading case of *Ram Coomar Coondoo and another* v. *Chunder Canto Mookerjee* (1) was cited before us. The Additional District Judge considered in the light of that case that the agreement under review being champertous should be carefully examined to see whether its terms were extortionate and unconscionable. He found that the terms were extortionate and unconscionable and he awarded the plaintiff Rs. 1,000 as a fair compensation for the services which he had rendered under the agreement.

In order to consider whether the agreement of the 22nd February 1932 is void as against public

(1) (1876) 4 I.A. 23.

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policy or not, it is necessary to look somewhat carefully at the judgment in the case I have just cited, *viz.*, *Ram Coomar Coondoo and another* v. *Chunder Canto Mookerjee* (1). Sir Montague E. Smith, in delivering the judgment, referred to the case of *Fischer* v. *Kamala Naicker* (2), and he quoted the judgment in that case (at page 44) as follows :

"The Court seem very properly to have considered that the champerty, or more properly the maintenance, into which they were inquiring was something which must have the qualities attributed to champerty or maintenance by English law ; it must be something against good policy and justice, something tending to promote unnecessary litigation, something that in a legal sense is immoral, and to the constitution of which a bad motive is in the same sense necessary."

Sir Montague Smith goes on to say—

"It is unnecessary now to say whether the above considerations are essential ingredients to constitute the statutable offence of champerty in *England* ; but they have been properly regarded in *India* as an authoritative guide to direct the judgment of the Court in determining the binding nature of such agreements there."

He then goes on to quote with approval the observations made in *Chedambara Chetty* v. *Renga Krishna Muttu Vira Puchiya Naicker* (3) :

"Probably the true principle is that stated by Sir Barnes Peacock in the course of the argument, *viz.*, that administering, as they are bound to administer, justice according to the broad principles of equity and good conscience, those Courts will consider whether the transaction is merely the acquisition of an interest in the subject of litigation *bona fide* entered into, or whether it is an unfair or illegitimate transaction got up for the purpose merely of spoil or of litigation disturbing the peace of families and carried on from a corrupt and improper motive."

(1) (1876) 4 I.A. 23. (2) 8 M.I.A. 170.
(3) (1874) 1 I.A. 241.

Those are the sorts of champertous contracts which are void as against public policy in India. In *Ram Coomar*'s case the learned Judge then goes on:

"Their Lordships think it may properly be inferred from the decisions above referred to, and especially those of this tribunal, that a fair agreement to supply funds to carry on a suit in consideration of having a share of the property, if recovered, ought not to be regarded as being, *per se*, opposed to public policy. Indeed, cases may be easily supposed in which it would be in furtherance of right and justice, and necessary to resist oppression, that a suitor who had a just title to property, and no means except the property itself, should be assisted in this manner.

But agreements of this kind ought to be carefully watched, and when found to be extortionate and unconscionable, so as to be inequitable against the party; or to be made, not with the *bonâ fide* object of assisting a claim believed to be just, and of obtaining a reasonable recompense therefor, but for improper objects, as for the purpose of gambling in litigation, or of injuring or oppressing others by abetting and encouraging unrighteous suits, so as to be contrary to public policy,—effect ought not to be given to them."

The present case is one in which it seems clear that the suitor, Kalimuthu, had a just claim to property. He was also a person who was under some limitations with respect to his ability to go to Rangoon and manage his business for himself; and, although it is clear that the agreement of the 22nd February 1932 would appear to be one that would be champertous according to English law, the Court is not disposed to find that in all the circumstances it is either extortionate or unconscionable.

It is necessary to examine agreements of this kind, the circumstances in which they were made and, possibly, also the consideration given; but mere inadequacy of consideration is not sufficient, in our opinion, to enable a Court to set aside a contract of this description on the ground that it is

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against public policy. Where the inadequacy of consideration is so glaring and the circumstances surrounding the contract are so suspicious as to lead the Court to the view, not that one of the parties has made a bad bargain merely, but that one of the parties must have been imposed upon and taken advantage of by a person who had better means of knowledge than he himself possessed, the contract may be set aside. In the words of Lord Westbury in *Tennet* v. *Tennet* (1),

> "it is true that there is an equity which may be founded upon gross inadequacy of consideration. But it can only be where the inadequacy is such as to involve the conclusion that the party either did not understand what he was about or was the victim of some imposition."

It is not for us, therefore, to inquire whether Tha Din was being paid too handsomely for his services. Kalimuthu had a great deal at stake and it appears from the evidence that Tha Din paid several visits to Rangoon, repeatedly interviewed persons connected with the suit and busied himself over a substantial period of time with little else than Kalimuthu's affairs. He was to receive, under the contract, the sum of Rs. 7,500. The actual amount which Kalimuthu was found to be entitled to is described by him as 1,300 acres of paddy land and some gardens and houses. He also hoped at one time that he might recover an even more valuable amount of property than this. In the case which was cited to us by the learned counsel for the appellant, *viz.*, *Kunwar Ram Lal* v. *Nil Kanth and others* (2) the Judicial Committee of the Privy Council affirmed the view taken by the Judicial

(1) 2 H.L.C. 6.

(2) (1893) 20. I.A. 112.

Commissioner at Lucknow, in which he awarded the appellant a sum of Rs. 1,000 in respect of services rendered in connection with a claim in the Courts. The appellant claimed a 9-anna share of the property recovered, but the respondents appear to have proved that the only services given were the purchase and application to a form of an 8-anna stamp. The case cited is, therefore, unlike the case we have to decide. There is really no evidence from which it can be properly inferred that the agreement of the 22nd February 1932 is so extortionate and unconscionable as to be inequitable. It was not entered into for any improper object, but in order to assist a *bonâ fide* claim of right. It involved the undivided attention of Tha Din for some considerable time and he ran the risk of not being paid at all if the claim was unsuccessful.

We think, in these circumstances, that effect should be given to the contract which was entered into between the parties, and, accordingly, we dismiss the appeal of Kalimuthu in respect of the Rs. 1,000 with costs and we allow the appeal of Maung Tha Din for Rs. 6,500 with costs on the amount, being the balance of the moneys due under the contract.

BAGULEY, J.—I agree.