PRIVY COUNCIL.

P.C.*
1908
Jan. 24.

BHAGWAT DAYAL SINGH
v.
DEBI DAYAL SAHU.

[On appeal from the High Court at Fort William in Bengal.]

Champerty and maintenance—Agreement opposed to public policy—Inadequacy of price for property to be recovered by suit—Hindu law—Alienation by widow—Ratification of transactions not carried out by real heir of property—Contract Act (IX of 1872) s. 196—Real owner joining in later transactions—Legal necessity—Portion of consideration of deeds of sale justified by necessity—Form of decree for possession and mesne profits where deeds were held invalid.

There is no law in force in India similar in its effect to the English Law of Champerty and Maintenance, so as to render void an agreement which would, were such English law applicable, be considered champertous.

Ram Coomar Coondoo v. *Chunder Canto Mookerjee*(1); *Kunwar Ram Lal* v. *Nil Kanth*(2); *Achal Ram* v. *Kazim Husain Khan*(3) followed.

An assignment of property said to bel worth three lakhs, by persons claiming to be the next reversioners on the death of a female owner, for a consideration of Rs. 52,600 of which sum Rs. 600 was paid at the time of the execution of the deed, and the balance payable in proportion to the success of a suit by the assignee and assignors to recover the property, for the prosecution of which suit the assignee was to supply the funds, *held* not to be a transaction contrary to public policy and void on that ground by reason of the provision for payment of the purchase money.

Whether it was an unfair and unconscionable bargain by reason of the inadequacy of the price was a question between the assignors and assignee which it was unnecessary to decide in a suit in which the assignors did not repudiate the transaction, but asked that effect be given to it and for that purpose joined the assignee as plaintiff in the suit.

A person who claims title under conveyances from a Hindu female heir with a limited interest, and who seeks to enforce that title against reversioners is always subject to the burden of proving not only the genuineness of his conveyances, but the full comprehension by the limited owner of the nature of the

* *Present:* LORD ROBERTSON, LORD COLLINS, and SIR ARTHUR WILSON.

(1) (1876) I. L. R. 2 Calc. 233; L. R. 4 I. A. 23.
(2) (1893) L. R. 20 I. A. 112; I. L. R. 20 Calc. 843.
(3) (1905) I. L. R. 27 All. 271; L. R. 32 I. A. 113.

alienations she was making, and also that those alienations were justified by necessity, or at least that the alienee did all that was reasonable to satisfy himself of the existence of such necessity. And this burden lies the more heavily on one who comes into Court with the case that he did not take from a limited owner, but from one whose title he alleges to have been adverse to that owner.

The defendant's title to the property in suit depended on alienation made in his favour by one of three Hindu ladies, who was not the heir of the last male owner, and on two subsequent deeds of sale, which it was sought to set aside in this suit, in which the real owner had joined :—

Held, with reference to the earlier transactions, that the onus on the defendant had not been discharged, and that there was no satisfactory evidence that they had been authorized in any way by the real owner.

Nor could she ratify them under section 196 of the Contract Act (IX of 1872) by becoming a party to the later transactions; it would be a serious extension of the law, as hitherto applied, to hold that a woman with a limited interest could by acts *ex post facto* charge upon the estate which she represents obligations not originally binding upon it.

Though the deeds of sale were therefore invalid, the consideration being for the most part not justified by legal necessity, yet as to certain sums in both deeds as to which such necessity was established it was held that the first Court had rightly made the decree for possession conditional on the payment by the plaintiff of such sums to the defendant.

As the deeds were void, as such, the claim for mesne profits was well founded.

Two consolidated appeals from one judgment and two decrees (20th July 1903) of the High Court at Calcutta, which modified a judgment and two decrees (20th December 1899) of the Court of the Subordinate Judge of Ranchi.

The plaintiffs were the appellants to His Majesty in Council.

The suits out of which the appeals arose were brought to recover certain immoveable property to which the second and third plaintiffs-appellants alleged they were entitled as the next reversionary heirs of one Narayan Singh; and on 29th November 1895 they had executed, in favour of the first plaintiff-appellant, a deed by which they sold to him the whole of their right title and interest in the estate of Narayan Singh. The consideration was Rs. 52,600, of which sum Rs. 600 were paid to the vendors, the balance being only payable in the event of the vendee's success in recovering the property by suit.

The main questions raised on these appeals were whether the suits were not maintainable on the ground of champerty

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and maintenance; and whether two deeds of sale executed by certain Hindu ladies were valid and binding on the male reversioners to the estate of the said Narayan Singh the last male owner.

The facts are sufficiently stated in their Lordships' judgment and in the report of the cases before the High Court (RAMPINI and PARGITER JJ.) on appeal, which will be found in I. L. R. 31 Calc. 433.

On this appeal,

Cohen K. C. and *Kenworthy Brown*, for the appellants, contended that the assignment by the second and third appellants to the first appellant was valid and binding, and enabled the assignee to maintain these suits for the recovery of the property in which the right, title and interest of the assignors had been purchased by him. As showing the law of England with respect to champerty and maintenance reference was made to *Bradlaugh* v. *Newdigate*(1), and *Alabaster* v. *Harness*(2). But the English law of champerty and maintenance had been held not to be applicable in India, and there was nothing in the law of India to make the assignment under which the first appellant derived his title illegal or void as being against public policy. Reference was made to *Ram Coomar Coondoo* v. *Chunder Canto Mookerjee*(3); *Kunwar Ramlal* v. *Nilkanth*(4); *Achal Ram* v. *Kazim Husain Khan*(5). And even if the assignment be held to be illegal, and the first appellant therefore not entitled to decrees in the suits, the second and third appellants would be entitled to decrees under the prayer in the plaint for general relief: the High Court therefore was wrong in reversing the decree of the Subordinate Judge and dismissing the suits as against them.

It was also contended that the deeds of sale dated 19th January 1887 and 15th May 1891, alienations made by the ladies in possession of the property in dispute after the death of Narayan Singh of whom however only one, his grandmother

(1) (1883) L. R. 11 Q. B. D. 1.
(2) (1894) L. R. 1 Q. B. D. 339, 342.
(3) (1876) I. L. R. 2 Calc. 233, 249, 255; L. R. 4 I. A. 23, 39, 47.
(4) (1893) L. R. 20 I. A. 112, 115; I. L. R. 20 Calc. 843, 846.
(5) (1905) I. L. R. 27 All. 271; L. R. 32 I. A. 113.

Jileb Koer was his heir, were void as having been executed by them without any independent advice, without adequate consideration, and because the evidence did not show that there was sufficient legal necessity to justify the alienations, or that the vendees made due inquiries as to the existence of such necessity, or had the *bonâ fide* belief that any such necessity existed. The onus of proof lay on the respondent. Reference was made to *Collector of Masulipatam* v. *Cavaly Vencata Narainapah*(1), *Amarnath Sah* v. *Achhan Kuar*(2), *Kameswar Pershad* v. *Run Bahadur Singh*(3), *Sham Sundar Lal* v. *Achhan Kunwar*(4), *Tika Ram* v. *Deputy Commissioner of Barabanki*(5), and *Deputy Commissioner of Kheri* v. *Khanjan Singh*(6). As to the sale deeds the Subordinate Judge had made proper decrees so far as the second and third appellants were concerned, in giving them decrees for recovery of the property in suit conditional on their paying to the first respondent certain sums advanced which were justified by legal necessity. The Subordinate Judge however had dismissed the suits so far as the first appellant was concerned on the ground that the assignment to him by the other appellants was void. It was submitted that the assignment was valid and therefore the decrees should be in favour of the first appellant for possession of the property in suit with mesne profits, and with, if thought desirable, the same conditions as to the payments to the first respondent as the Subordinate Judge had imposed, his decrees having been wrongly reversed by the High Court.

Sir R. Finlay K.C. and *DeGruyther*, for the respondents, contended that although the English law of champerty and maintenance was not in force in India yet there existed principles in the Indian law which were very similar in effect to that law. In the case of *Ram Coomar Coondoo* v. *Chunder Canto Mookerjee*(7), it was said that the ground on which

(1) (1861) 8 Moo. I. A. 529.
(2) (1892) I. L. R. 14 All. 420, 429; L. R. 19 I. A. 196, 202.
(3) (1880) I. L. R. 6 Calc. 843; L. R. 8 I. A. 9.
(4) (1898) I. L. R. 21 All. 71, 81; L. R. 25 I. A. 183, 191.
(5) (1899) I. L. R. 26 Calc. 707, 711; L. R. 26 I. A. 97, 99.
(6) (1907) I. L. R. 29 All. 331; L. R. 34 I. A. 72.
(7) (1876) I. L. R. 2 Calc. 233; L. R. 4 I. A. 23.

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contracts of the nature of champerty and maintenance should be held by the Indian Courts to be invalid, was that they were contrary to public policy. It was against public policy in India, as in England, to allow one person without any interest in the subject of a suit, to make a contract with another to maintain it with funds on the mere chance of its being successful, as in these cases that would be merely a speculative and gambling transaction. Reference was made to *Tara Soondaree Chowdhrain* v. *Collector of Mymensingh*(1), *Achal Ram* v. *Kazim Husain Khan*(2), Stephen's Commentaries 5th Ed Vol. IV, Book VI, Chap. IX, Title 13, "Champerty" page 317; Roman Law, Corpus Juris Civilis, Leipsic Ed. 1865, Vol. I, Book 48, Title X para. 20; Book XLIV, Title VI paras. 1, 2, 3; Book IV, Title XXXV para. 22; Book VIII Titles XXXVI, XXXVII paras. 2 and 4; French law, "Droit Civil Expliqué" by Troplong, 5th Ed. 1856," "De La Vente" Vol. II, page 482, para. 985; and "Dictionaire De Droit" by Legrand, Title "Retrait." Further, it was contended that the bargain was unconscionable on the ground of the inadequacy of the price, and was invalid for that reason.

When the Subordinate Judge found that the assignment to the first appellant was invalid he should not have given decrees to the second and third appellants under the prayer for general relief in the plaint: the granting such decrees was inconsistent with the prayer of the plaint and amounted to an amendment of it: *Cargill & Bower*(3); and Civil Procedure Code (Act XIV of 1882) section 13, Explanations 1 and 2, and section 53 were referred to.

As to the validity of the alienations reference was made to Mayne's Hindu law 6th Ed. pages 827, 829 section 634 as to the obligations of a female heir taking a limited estate in immoveable property; and the evidence was discussed to show that the High Court was right in holding that there was legal necessity for the alienations, and that they were made for adequate consideration: the sale deeds were consequently valid,

(1) (1873) 13 B. L. R. 495; 20 W. R. 446.

(2) (1905) I. L. R. 27 All. 271; L. R. 32 I. A. 113.

(3) (1878) L. R. 10 Ch. D. 502, 508.

it was submitted, as against the reversioners, the second and third appellants.

Cohen K.C., in reply, as to the assignment, referred to *Hutley* v. *Hutley*(1) and to the "Principles of German Civil Law" by E. J. Schuster, Ed. 1907, page 119, para. 120; *Tarachand* v. *Suklal*(2); Contract Act (IX of 1872), section 30; and Civil Procedure Code, section 13: and with regard to the alienations, *Raj Lukhee Dabea* v. *Gokool Chunder Chowdhry*(3).

The judgment of their Lordships was delivered by

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SIR ARTHUR WILSON. These consolidated appeals relate to three villages, Chiyanki, Ganka, and Lalgara, and the substantial conflict is between the first appellant and the first respondent.

The villages with others were formerly the property of Ram Saran Singh, who on his death was succeeded by his infant son Narayan. Narayan died, while still an infant and unmarried, on the 7th August 1879, and left surviving him his grandmother Jileb Koer, an aunt Aprup Koer, widow of Ram Saran's brother, and a stepmother Etraj Koer, widow of Ram Saran. Of these, the grandmother was heir to the boy's property with the limited interest of a Hindu female inheriting from a male. The three ladies appear to have lived together down to the death of the grandmother, which took place on the 22nd November 1894.

On the death of the grandmother, the inheritance again opened, and the second and third appellants, Bhanpertap Singh and Kirpa Narayan Singh, were then the nearest male heirs of the deceased boy. Those two persons, on the 29th November 1895, purported to sell the three villages in question to Rajah Bhagwat Dayal Singh, the first appellant. And that is the title under which he claims.

The first respondent, on the other hand, as the case is now put on his behalf, claims under two sale deeds executed, as it is now said, by or on behalf of the grandmother, Jileb Koer, the sales being, it is contended, justified by necessity so as to pass

(1) (1873) L. R. 8 Q. B. 112. (2) (1888) I. L. R. 12 Bom. 559.
(3) (1869) 13 Moo. I. A. 209.

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the whole inheritance. The first of these deeds bore date the 19th January 1887. It purported to be a conveyance by way of sale, by the three ladies who have been mentioned, of the two villages Chiyanki and Ganka to the first respondent. The second deed was dated the 15th May 1891. It purported to be executed by the same three ladies in favour of one Hodges and to convey to him by way of sale the village Lalgara. Hodges afterwards conveyed to the first respondent.

The present suits were brought on the 29th August 1898 in the Court of the Subordinate Judge at Ranchi. The plaintiffs were the first appellants and the two persons from whom he purchased. The sole defendant in one suit and the substantial defendant in the other was the first respondent. The first suit related to the village Lalgara, the second suit to the villages Chiyanki and Ganka. The claim in each case was for possession and mesne profits.

The first question raised in the case and argued on the appeals was whether or not the sale by the second and third appellants to the first appellant was void in law, so as to pass no title, on the ground that it was champertous, or contrary to public policy.

For the respondents it was boldly argued that, although the English law as to maintenance and champerty is not, as such, applicable to India, yet on other grounds what is substantially the same law is there in force. Their Lordships are of opinion that that proposition cannot be supported. In three cases before this Board [*Ram Coomar Coondoo* v. *Chunder Canto Mookerjee*(1), *Kunwar Ram Lal* v. *Nil Kanth*(2), *Achal Ram* v. *Kazim Husain Khan*(3)] a contrary doctrine has been laid down. In the last of those cases full effect was given, under circumstances closely analogous to those of the present case, to an agreement which would certainly have been void if champerty avoided transactions in India.

It was further argued that the transactions in question was contrary to public policy and void on that ground by reason of

(1) (1876) I. L. R. 2 Calc. 233; L. R. 4 I. A. 23.

(2) (1893) L. R. 20 I. A. 112; I. L. R. 20 Calc. 843.

(3) (1905) I. L. R. 27 All. 271; L. R. 32 I. A. 113.

the provision as to payment of the purchase money by the first appellant to the second and third. The purchase money was fixed at Rs. 52,600, of which Rs. 600 was to be paid down, and the balance when the property should be recovered. Their Lordships are unable to agree to this argument. In their opinion the condition so introduced does not carry the case any further than does the champertous character of the transaction generally.

It was further said, and this was relied upon in the Courts in India, that the transaction was an unfair and unconscionable bargain for an inadequate price. But that is a question between assignor and assignee. It is unnecessary to consider what the decision ought to have been if this had been a litigation between the assignors and the assignee in which the former sought to repudiate the assignment. In the present case the assignors do nothing of the kind. They maintain the transaction and ask that effect be given to it, and for that purpose they join as plaintiffs in the present actions. Their Lordships are therefore of opinion that the attack upon the title of the first appellant upon any such grounds as those indicated must fail.

The second question that has to be considered is whether the respondent has shown a good title in himself by purchase from Jileb Koer, the grandmother, under the two sale deeds mentioned, and under such circumstances as to make that title effectual against the reversionary heirs.

The Subordinate Judge, who tried the cases, held that the conveyances were not good, but he allowed, in favour of the first respondent, certain sums which he considered to have been advanced for purposes of legal necessity; and whilst giving a decree to the appellants and plaintiffs for possession of the property, he made that decree conditional upon the payment to that respondent of the sums held to have been advanced for legitimate necessities. On the argument of these appeals, Mr. Cohen, for the appellants, accepted the propriety of this mode of dealing with the case, and assented to the allowance so made by the Subordinate Judge.

The High Court, on appeal, differed from the first Court, and held that the necessity for the sales in question was established.

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Before dealing further with this question, it must be noticed that the case now contended for is not the case raised on the pleadings and relied upon at the trial. The respondent in his written statement alleged a title derived, not from Jileb Koer, but from Etraj Koer. He said, in paragraph 21, that "Etraj Koer was no heir to Narayan Saran Singh, and that she acquired an absolute right by adverse possession;" in paragraph 23 "that it is not true, as the plaintiffs allege, . . . that on the death of Narayan Saran Singh, Jileb Koer succeeded as heir and was in possession up to her death; the fact is . . . that Etraj Koer alone was in such possession until her death," and in paragraph 25 that "Jileb Koer and Aprup Koer never took the estate of Narayan Saran Singh as heir, and the fact of their joining in the documents as persons executing the deeds of sale and the prior deeds was a matter of form of evidence of members dependent for maintenance on Etraj Koer, and was merely a surplusage'; and it was added in paragraph 26 that "even if Jileb Koer were to have taken the estate . . . by inheritance, she would take it in absolute state . . . under the provisions of Mitakshara law, and so also if she was made a co-sharer by Etraj Koer in Etraj Koer's right." In his evidence given at the trial the respondent endeavoured to maintain the case that his title was derived from Etraj Koer and was good on that account.

One who claims title under a conveyance from a woman, with the usual limited interest which a woman takes, and who seeks to enforce that title against reversioners, is always subject to the burden of proving not only the genuineness of his conveyance, but the full comprehension by the limited owner of the nature of the alienation she was making, and also that that alienation was justified by necessity, or at least that the alienee did all that was reasonable to satisfy himself of the existence of such necessity. And this burden lies the more heavily on one who comes into Court with the case that he did not take from a limited owner but from one whose title he alleges to have been adverse to that owner.

These considerations apply with special force to the present case. The earlier transactions of the first respondent were with

Etraj Koer, and there is no satisfactory evidence to show that Jileb Koer, the real owner, took part in them, or authorised them in any way.

It was argued, however, that if Jileb Koer was not shown to have authorised the earlier transactions, she had ratified them by being a party to the later documents and particularly the two sale deeds. Ratification in the proper sense of the term, as used with reference to the law of agency, is applicable only to acts done on behalf of the ratifier. And this rule is recognised in section 196 of the Indian Contract Act. Looking to the substance of the matter, it would be a serious extension of the law, as hitherto applied, to hold that a woman with a limited interest could, by acts *ex post facto*, charge upon the estate which she represents obligations not originally binding upon it.

With regard to the first of the sale deeds now in question, when the details which make up the consideration come to be examined, it appears that they include one sum of Rs. 1,500 which the Subordinate Judge credited to the first respondent in the manner already explained. Apart from this sum the great bulk of the consideration for this sale deed consists of debts originally incurred by Etraj Koer with accretions of interest and compound interest. Their Lordships are of opinion that this deed was correctly estimated by the Subordinate Judge.

The case as to the second sale-deed is not quite so simple. With regard to it the Subordinate Judge gave credit to the first respondent for considerable sums as having been advanced for real necessities. As to the rest of the consideration for that deed he held that necessity had not been established. In coming to this conclusion, he took into account not only the more general considerations already referred to, but also certain circumstances peculiar to the case—that the lady who alone had any power to convey was old, and had no independent advice to guide her, and that the first respondent was in a position to exercise considerable influence over her affairs. Their Lordships think the Subordinate Judge was justified in taking all these matters into his consideration; and they see no sufficient ground for rejecting his conclusions.

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There remains one other point for consideration. The plaintiffs claimed not only possession but mesne profits. The Subordinate Judge rejected the latter claim. Their Lordships are of opinion that, as the deeds of sale are not good as such, the claim for mesne profits is well founded. In argument it was conceded that on the other side of the account interest at 6 per cent. should be allowed on the sums credited to the first respondent. The amounts thus to be allowed on the one side and on the other can be adjusted in execution proceedings.

Their Lordships will humbly advise His Majesty that the appeals should be allowed, that the decrees of the High Court should be discharged with costs to be paid as regards the first decree by the present respondents other than Sowton and as regards the second decree by the first respondent, that the decrees of the Court of the Subordinate Judge should be discharged, and that instead thereof it should be ordered that upon the first appellant paying to the first respondent the sums found in favour of the latter by the Subordinate Judge with interest at 6 per cent. per annum the first appellant do recover possession of the property in suit together with mesne profits to be ascertained in execution proceedings and cost to be paid by the First Party defendants in the first suit and by the sole defendant in the second suit.

The respondents other than Sowton will pay the costs of these appeals.

Appeals allowed.

Solicitors for the appellants: *Withall and Withall.*

Solicitors for the respondents (except Sowton): *T. L. Wilson & Co.*

J. V. W.