

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Raja
Mohkam Singh and others v. Raja Rup Singh,
from the High Court of Judicature for the
North-Western Provinces at Allahabad, heard
ex parte, delivered 28th April 1893.*

Present :

LORD WATSON.

LORD MORRIS.

SIR RICHARD COUCH.

HON. GEORGE DENMAN.

[*Delivered by Sir Richard Couch.*]

The Respondent is the younger and only brother of Mohendra Singh, Rais of the ancient impartible estate of Bhara or Bhauri, who died in September 1871 without leaving a son, but leaving a widow Rani Baisni who took possession of and held her husband's estate under an alleged title as widow. The Respondent instituted a suit against her in the Court of the Subordinate Judge of Mainpuri to recover possession of the estate as impartible and descending to him under the ancient usage of the family, contending that after the decease of a Rajah of Bhara his nearest and eldest male heir succeeds him to the exclusion of the other male heirs and the total exclusion of women. The suit was dismissed by the First Court on the 25th September 1878, and the Respondent's appeal to the High Court at Allahabad was dismissed on the 7th May 1880.

On the 13th March 1882 an instrument of sale upon which the question in this appeal arises was executed by the Respondent. It recites

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the institution of the suit against the widow, its dismissal, and the dismissal of the appeal, and proceeds as follows :—

“ Thus arose the necessity for filing an appeal
 “ to the Privy Council. It is clear I have not a
 “ pice and my only hope for justice lies in an
 “ appeal to the Privy Council. I have therefore
 “ with entreaties got Raja Loke Indar Singh
 “ (since deceased and now represented by the
 “ Appellant Raja Mohkam Singh) Sheikh Nasrat
 “ Hussain (Lala Bhikhari Das, Munshi Har
 “ Narain) Bibi Chunni Kuar and Kuar Dharam
 “ Singh persons belonging to the first class given
 “ below to consent that they should meet the costs
 “ of the Privy Council including security by way
 “ of a help to me and should in lieu thereof be
 “ the proprietor of an eighth share of the pro-
 “ perty involved in the case with the exception
 “ of those articles. They have accepted the
 “ proposal, and deposited the security and the
 “ translation fees, and have undertaken to pay
 “ the other expenses of the Privy Council appeal.”

The Respondent then by the deed sold an eighth share in the Bhara estate and of outstanding debts due to the estate, amounting to Rs. 64,155 to the persons before named; and it is stated that the consideration for the sale was Rs. 12,500, the estimated cost of the Privy Council Appeal, consisting of Rs. 4,000 for the security of the Privy Council costs, and Rs. 8,500 for the translation of papers, the pleader's fee, and other expenses of every sort in the said department.

The appeal to Her Majesty in Council was successful. The decrees of both the Lower Courts were reversed, and it was decreed that the Plaintiff (the present Respondent) should recover possession of the estate (L. R. 11, I. A. 149). On the 13th August 1884 he was put in possession of it, and having refused to give to the purchasers any part of the eighth share, a suit

was on the 31st July 1885 brought against him to recover it.

The Plaintiffs had on the 31st January 1881 deposited in the High Court their security bond for the costs of the appeal, and they afterwards advanced for the costs of translation and remittance to England the sums of Rs. 783, Rs. 4,759, and Rs. 2,000.

The law applicable to the case is stated in the judgment of this Board in *Ram Coomar Coondoo v. Chundur Canto Mookerjee*, (L. R. 4, I. A. 47.) “ 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 care- “ fully 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 recom- “ pense 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 latter part of this passage is not applicable to the present case. The question is whether the agreement was so extortionate and unconscionable as to be inequitable against the Respondent. The Subordinate Judge dismissed the

suit. He held the sale not to be equitable and just, but he gave other reasons for dismissing the suit which cannot be considered satisfactory. He says, "It was by no means becoming of the plaintiffs who had made him (the Respondent) a Raja to have now joined together in bringing him down from the dignity of a Raja to the state of a subject, and themselves becoming the Rajas at his expense." And he appears to have thought the impartibility of the estate to be an answer to the Plaintiffs' claim, for he says, "Thus, if the plaintiffs' claim were to be decreed now, it would necessitate a partition of the eighth part of the estate to be awarded to them, who might be called Rajas or Maharajas thereof. But this would be altogether against the intent of the Privy Council ruling, and it would be as if it were cancelling the said ruling." In fact this judgment appears to their Lordships to be founded, partly at least, on reasons which are inapplicable to the question. The High Court on appeal reversed the decree of the Subordinate Judge and decreed that the Plaintiffs should recover from the Respondent Rs. 1,588 interest on the amount of the security bonds at the rate of 12 per cent. per annum from the date when they were deposited in Court until the allowance of the appeal by Her Majesty in Council; Rs. 691 expenses of translation and printing, and Rs. 990.13.4 interest thereon at 20 per cent. per annum; Rs. 92 also on account of translation and Rs. 106.14.4 interest thereon from the 22nd September 1882 to the 12th July 1888, the date of its decree; Rs. 4,759 money advanced, and Rs. 4,711.6.6 interest thereon at 20 per cent. to the same date; Rs. 2,000 advanced for the purposes of review and Rs. 1,447.5.6 interest thereon, with costs in the High Court and Court below—amounting in the aggregate to Rs. 19,448.12.8. In their judgment the High Court say that after the

appeal in the former suit from the Court of the Subordinate Judge had been dismissed the Respondent was without any means, and unless he obtained assistance on such security as he could offer he could not have filed or prosecuted his appeal to the Privy Council; that the Plaintiffs did not press him to accept the terms contained in the deed. After giving their reasons for making the above decree, which are generally that the Plaintiffs were not professional money-lenders who had taken advantage of the position of the Defendant, and had not volunteered their assistance to promote litigation, they say, "In " this case, judging by the disproportion between " the liability which the plaintiffs incurred under " the contract and the amount of the reward " which they were to obtain in the event of the " defendant succeeding in the Privy Council, " we are compelled to conclude either that the " plaintiffs did not believe that the defendant's " claim in the action was well-founded and con- " sequently entered, although unwillingly, into a " gambling transaction, or that if they did believe " that his claim was well-founded, then the " reward which, under their contract, they were to " obtain, was excessive and unconscionable. In " either event we could not enforce this contract " in its terms." The more favourable view for the Plaintiffs is that they believed the claim to be well founded. Their Lordships adopt this, and think that the question whether the deed is contrary to public policy does not arise. They consider the finding of the High Court to be that the reward is excessive and unconscionable. It is evident from their judgment that they felt constrained to come to this conclusion. They say, " We confess that in this case our sympathies " are entirely with the plaintiffs, and we do not " refuse to decree their claim for possession of " the share out of any sympathy for the Defen-

“ dant.” A decision thus arrived at ought not to be set aside on appeal unless it clearly appears to be wrong, and their Lordships having heard all that the learned Counsel for the Appellants could urge against the decree of the High Court are unable to say that they think that it is wrong. They will therefore humbly advise Her Majesty to affirm it, and to dismiss the appeal.
