

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Srish Chandra Roy and Others v. Roy Banomali Rai Bahadur, from the High Court of Judicature at Fort William in Bengal; delivered the 23rd March 1904.*

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Present at the Hearing :

LORD DAVEY.

LORD ROBERTSON.

SIR ARTHUR WILSON.

[*Delivered by Lord Davey.*]

The suit out of which this Appeal has arisen was one for specific performance of an agreement dated the 20th May 1861, whereby Banwari Lal Roy, the father of the Respondent, promised that when certain mehals (referred to in the case as Dhulauri) should come back into his khas possession, he would settle the same on Srijuta Govinda Peari Dasi (the mother of the Appellants) and her heirs in permanent ijara at a rental of Rs. 1,001. It is alleged in the plaint, and it is clearly established by the documents in evidence, that this agreement was part of a compromise made between Banwari Lal Roy and Krishna Behari Roy (the husband of Govinda and father of the Appellants), and formed part of the consideration for that compromise. The Respondent refuses specific performance on the ground of failure of consideration and other equitable grounds.

The facts of the case are as follows. Gour Sundar Roy died in February or March 1834 childless, but leaving his mother, Hemlata

Chowdhurani, and a widow, Brajeswari Chowdhurani, surviving. After his death Brajeswari adopted Banwari Lal Roy as the son of Gour Sundar. But for this adoption Krishna Behari Roy would have been the heir of Gour Sundar, and subject to the interests of the latter's mother and widow would have succeeded to his estate. Hemlata appears to have assumed the management of the estate, and she purported to grant, but without any apparent authority to do so, four permanent leases of parts thereof, including leases of two mehals called Narsingpara and Sayandaha to Krishna. After Banwari Lal came of age he made an arrangement with Brajeswari by which six annas of the estate were granted to her for her life for maintenance.

In the month of May 1861 Banwari Lal instituted a suit against Krishna to set aside the ijaras or permanent leases granted to him by Hemlata; and also instituted similar suits against the holders of the other permanent leases granted by her. A compromise was thereupon come to between Banwari Lal and Krishna the terms of which are contained in four documents dated the 20th and the 22nd May 1861.

The documents dated the 20th May 1861 were: (1) The agreement now sued on. It should be mentioned that the property comprised in this agreement was included in the six annas granted to Brajeswari for her life, and would not therefore come into the khas possession of Banwari Lal until her death. (2) A patni pottah, or permanent lease, of other mehals also in favour of Govinda, at a total rent of Rs. 689. 4, upon payment of a premium of Rs. 1,301.

An ekrar dated the 22nd May 1861 was then executed by Krishna in favour of Banwari Lal. It recited (amongst other things) that Brajeswari duly adopted Banwari Lal under the power contained in an anumati-patra executed in her favour

by Gour Sundar on the 28th Magh 1240 B.S. It also recited the institution of a suit in 1858 by one Ganga Prosad Roy impeaching the anumati-patra and Banwari Lal's adoption, which was dismissed apparently on the ground that even if the adoption was invalid Ganga Prosad Roy had no title in the lifetime of Krishna. The ekrar then continues as follows :—

“ I, of course, made no mention of the anumati-patra granted  
 “ by the late Gour Sundar Roy, and of your adoption, in my  
 “ application to intervene in the said suit. Still as I consider  
 “ it necessary to give you some proof that I do not in any  
 “ manner or mode deny or refuse to acknowledge the truth of  
 “ the said events, I execute this ekrar in your favour, in which  
 “ I say that the said Gour Sundar Roy did, in fact, execute in  
 “ favour of his wife Brajeswari Chowdhriani the said anumati-  
 “ patra, and that in pursuance thereof, the said Chowdhriani,  
 “ following the terms of the said anumati-patra, and with the  
 “ permission and consent of her mother-in-law, the said Hemlata  
 “ Chowdhriani, received you as a gift, under a deed of gift, and  
 “ adopted you as a son according to the prescribed rites, and I,  
 “ by way of attesting the said deed of gift as a witness, have  
 “ placed my signature and affixed my seal amongst the  
 “ witnesses, and I fully admit the truth of the anumati-patra  
 “ executed by the late Gour Sundar Roy and of your adoption.  
 “ And I also admit the correctness of the statement made by  
 “ Brajeswari Chowdhriani to the effect that her husband, the  
 “ said Gour Sundar Roy, had executed an anumati-patra in her  
 “ favour to adopt a son, and that she had, in pursuance thereof  
 “ duly adopted you as a son, after having received you as a  
 “ gift, and acknowledging you the lawful heir of the late Gour  
 “ Sundar Roy, in her ekrar in your favour, dated the 29th  
 “ Sraban 1264 B. S., which was filed in suit No. 36 of 1856 of  
 “ the Court of the Principal Saddar Amin of this district.  
 “ And you, as the adopted son of the late Gour Sundar Roy,  
 “ now hold and will for ever hold to sons and grand-sons and  
 “ others in course of succession, as owner, having the rights of  
 “ gift and sale, the movable and immovable properties left by  
 “ him. To the said properties, I and my heirs do not have,  
 “ nor will ever have, any claims or objection. If my heirs at  
 “ any time in future do ever advance any claims it shall be  
 “ rejected. To this effect I execute the ekrar. Finis, dated  
 “ the 10th Jeyt.”

On the same 22nd May 1861 Krishna filed a solehnama in Banwari Lal's suit against him from which it appeared that Banwari Lal had agreed to ratify the lease of Narsingpara on receipt of a nazarana of Rs. 1,500, and Krishna

on the other hand had surrendered the lease of Sayandaha. The document concludes as follows :—

“ I file also with this petition the ekrar which I have  
 “ executed to-day on proper stamp in favour of the Plaintiff  
 “ containing my admissions of the authority to adopt which the  
 “ late Gour Sundar Roy executed in favour of his wife,  
 “ Brajeswari Chowdhani, and of the fact of due adoption by  
 “ her of the Plaintiff in pursuance thereof, and I pray that, on  
 “ reading my petitions, &c., and also the petition which the  
 “ Plaintiff is filing, the Plaintiff’s claim for khas possession in  
 “ respect of the aforesaid Sayandaha mehal may be decreed,  
 “ and his claim in respect of the remaining mehals may be  
 “ dismissed.”

It is stated in the Judgment of Mr. Justice Hill, in the High Court, that Krishna in his defence to Banwari Lal’s suit had impeached the adoption of Banwari Lal. And no doubt that was so, though the written statement is not in the Record. But however that may be, it is plain from the documents which have been referred to that it was at least known or feared that Krishna intended to do so. And their Lordships have no hesitation in inferring that the principal object of Banwari Lal in entering into the compromise was to obtain from Krishna a clear admission of his title to the zemindari and immunity in the future from attacks upon his title from that quarter.

Within a short time, however, after making this compromise Krishna applied for leave to intervene in Banwari Lal’s then pending suits against the holders of the other permanent leases purporting to have been granted by Hemlata, and was made a Defendant therein. He thereupon filed written statements in both suits impeaching the adoption and alleging that the ekrar of 22nd May 1861 had been obtained from him by fraud. The Court found against him on both points, and decrees were made in favour of Banwari Lal. Krishna appealed to the District Judge and thence to the High Court without success. In February 1871 he instituted a suit of his own

against Banwari Lal and his adoptive mother for the purpose of setting aside the adoption and obtaining a declaration of his own title as reversionary heir to Gour Sundar. His plaint and subsequent written statement contained charges of fraud and misrepresentation against both the Defendants the details of which it is unnecessary to consider. The suit was dismissed by the District Judge and an appeal by Krishna to the High Court was also dismissed. He then appealed to Her late Majesty in Council, but without success.

Govinda died in 1878. Banwari Lal died in 1880, and the present Respondent is his heir. Brajeswari died in 1894 and Krishna died in 1895.

The present suit was heard by the Additional Subordinate Judge of Pabna and Bogra, who, by his Decree dated the 31st January 1899, dismissed it with costs. That decree was affirmed on appeal to the High Court, and the present Appeal is from the Decree of the latter Court dated the 9th July 1901.

The Appellants sue as heirs both of Govinda and of Krishna, and the first point of the Appellants' Counsel was, that Govinda was entitled in her own right to the reversionary lease, and her title was not affected by the conduct of Krishna. In the High Court, Mr. Justice Hill stated that the case of the Appellants "here as in the Court below was, " that the agreement was between their father " and Banwari Lal, their mother, Gobinda Pyari " Dasi, being named merely as a benamidar for " the former, and it is in the character of his " representatives that they sought, and still " seek, to enforce the agreement." Without this statement their Lordships would have no difficulty in drawing the inference from the

circumstances of the case that it was a benami transaction. In any case Govinda was not a purchaser from Krishna, and she could not have any better right or title than Krishna himself.

The second and principal point of the Appellants was characterized by more boldness than plausibility. It was that Banwari Lal had received the full benefit of the compromise by being armed with the ekrar as a shield against the attacks of Krishna, and therefore the agreement in suit was for an executed consideration, with the result that the Respondent was in the position of a trustee for them. Their Lordships are not prepared to lay down as an abstract proposition that there is any necessary inconsistency in a party who has unsuccessfully tried to rescind an agreement afterwards claiming performance of it. But in the present case they think that Krishna not only tried to deprive Banwari Lal of the benefit of the agreement, but in a large measure succeeded in doing so. The security of his title to the zemindari was of immeasurably greater importance to Banwari Lal than the mere question of the putni. And their Lordships have already expressed their opinion that the principal consideration to Banwari Lal for the agreement was to obtain such security and immunity from future attacks. In short they do not give the ekrar the restricted effect suggested by the learned Counsel, but they think that its language necessarily imports an agreement by Krishna to abstain from questioning the validity of the adoption for the future.

Their Lordships are of opinion that there has been a failure of the consideration for the agreement in suit, and also that the conduct of Krishna was at variance with, and amounted to

a subversion of, the relation intended to be established by the compromise.

They will therefore humbly advise His Majesty that this Appeal should be dismissed, and the Appellants will pay the costs of it.

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