Judgment of the Lords of the Judicial Committee of the Privy Council on the Consolidated Appeals of Raja Rai Bhagwat Dayal Singh and others v. *Debi Dayal Sahu and others, and of Raja Rai Bhagwat Dayal Singh and others* v. *Debi Dayal Sahu, from the High Court of Judicature at Fort William in Bengal; delivered the* 24*th January* 1908.

Present at the Hearing:
LORD ROBERTSON.
LORD COLLINS.
SIR ARTHUR WILSON.

[*Delivered by 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.

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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 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 Appellant 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, 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 transaction in question was contrary to public policy and void on that ground, by reason of 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

* *Ram Coomar Coondoo* v. *Chunder Canto Mookerjee*, 4 I.A. 23; *Kunwar Ram Lal* v. *Nil Kanth*, 20 I.A. 112; *Lal Achal Ram* v. *Raja Kazim Husain Khan*, 32 I.A. 113.

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.

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.

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 costs 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.