

Privy Council Appeal No. 98 of 1921.

Oudh Appeal No. 24 of 1918.

Thakurain Harnath Kuar - - - - - *Appellant*

v.

Thakur Indar Bahadur Singh - - - - - *Respondent*

FROM

THE SUPREME COURT OF THE JUDICIAL COMMISSIONER OF OUDH.

**JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 28TH NOVEMBER, 1922.**

Present at the Hearing :

LORD BUCKMASTER.

SIR JOHN EDGE.

SIR LAWRENCE JENKINS.

LORD SALVESEN.

[*Delivered by* SIR LAWRENCE JENKINS.]

This is an appeal from a decree dated the 20th March, 1918, of the Court of the Judicial Commissioner of Oudh, which affirmed a decree dated the 3rd August, 1915, of the Subordinate Judge of Bara Banki.

The suit is for the possession of the villages specified in the plaint with an alternative prayer for the payment of money. Both the lower Courts have decided adversely to the plaintiff on each of these claims, and the suit has been dismissed with costs. From this decision the present appeal has been preferred.

The plaintiff's claim to the villages rests on an instrument which purports to have been a transfer on sale executed on the 2nd January, 1880, by the defendant, Indar Bahadur Singh in favour of Rachpal Singh, the plaintiff's deceased husband.

The villages were part of two taluquas in Oudh, known as Paska and Lilar, and owned by Thakur Naipal Singh, whose name was entered in List II attached to the Oudh Estates, Act I, of 1869, as estates which, according to the custom of the family, ordinarily devolved upon a single heir.

Thakur Naipal Singh died childless on the 28th October, 1873, leaving him surviving his two widows, Thakurain Iklas Kuar and Thakurain Choti. According to Hindu law, the defendant Indar Singh was the next reversioner. The widows set up a will as that of their deceased husband, and claimed that it empowered them to adopt. Indar Singh thereupon instituted a suit against them and the Court of Wards, who had taken over the estates, and, by the decree of the Deputy Commissioner of Bara Banki dated the 22nd October, 1878, the alleged will was declared void and invalid, and Indar Singh was declared "entitled to succeed to Paska and Lilar estates on the death of the last surviving widow of the late Naipal Singh."

It is the plaintiff's case that in 1878 her husband, Rachpal Singh, advanced Rs. 20,000 for this litigation and other expenses to Indar Singh, who was a poor man, and that in 1880, on a further advance of Rs. 5,000, Indar Singh executed the instrument of transfer on which this suit is brought.

Both Courts have held that the transfer was inoperative, as Indar Singh at its date had no interest capable of transfer but merely an expectancy.

It cannot be disputed that, according to the ordinary Hindu law, this is the true view, but the plaintiff, to escape from this predicament, contends that the rights of Indar Singh must be determined by reference to the provisions of the Oudh Estates Act and the declaration contained in the Deputy Commissioner's decree.

Whatever the view that may once have prevailed, it is now established that under the Oudh Estates Act the succession to collaterals opens on the death of the widow just as under the ordinary Hindu law, and it necessarily follows that in January, 1880, Indar Singh had no more than an expectancy, and so had no interest in the villages which he was competent to transfer or bind.

Nor, in their Lordships' opinion, was this position modified by the Deputy Commissioner's decree. As the suit was constituted, the Deputy Commissioner could only have made a declaration binding on the widows and the Court of Wards, and it certainly was not within his competence to make a valid declaration that would create in Indar Singh's favour an interest in the villages that did not otherwise exist. The claim for possession was, therefore, rightly rejected.

And so it becomes necessary to consider the claim for payment of money. The amount demanded is Rs. 1,28,033-4-8, and this is made up of Rs. 25,000 principal and Rs. 1,03,033-4-8 interest at Rs. 1 per cent. per month from the 2nd January, 1880, to the 5th May, 1914.

The payment of the Rs. 25,000 is established, and the defendant's pleas that the instrument of the 2nd January, 1880, was executed under undue influence and was extortionate have failed, but the claim for recovery of the money has been held to be barred by limitation.

Before this Board, the claim has been based on Section 65 of the Contract Act. It is there provided that "when an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it or to make compensation for it to the person from whom he received it."

So framed, the plaintiff's claim to compensation rests, not on any principle or formula of English law, but on the words of this section, and it has to be seen whether the facts of this case come within its scope. The section deals with (a) agreements and (b) contracts. The distinction between them is apparent from Section 2. By clause (e) every promise and every set of promises forming the consideration for each other is an agreement, and by clause (h) an agreement enforceable by law is a contract. Section 65, therefore, deals with (a) agreements enforceable by law and (b) with agreements not so enforceable. By clause (g) an agreement not enforceable by law is said to be void.

An agreement, therefore, discovered to be void is one discovered to be not enforceable by law, and, on the language of the section, would include an agreement that was void in that sense from its inception as distinct from a contract that becomes void.

The agreement here was manifestly void from its inception, and it was void because its subject matter was incapable of being bound in the manner stipulated.

Though this aspect of the case has not been satisfactorily presented or developed in the pleadings and the proceedings before the lower Courts, their Lordships think there are materials on the record from which it may be fairly inferred in the peculiar circumstances of this case that there was a misapprehension as to the private rights of Indar Singh in the villages which he purported to sell by the instrument of the 2nd January, 1880, and that the true nature of those rights was not discovered by the plaintiff or Rachpal Singh earlier than the time at which his demand for possession was resisted, and that was well within the period of limitation.

It was thus that the agreement was discovered to be void, and the discovery in their Lordships' view, was one within the words and the meaning of Section 65 of the Contract Act.

The plaintiff, therefore, though not entitled to recover possession of the villages, is entitled to recover compensation, and in assessing that compensation their Lordships consider it should include the sum of Rs. 25,000 found by both Courts to have been paid to Indar Singh, and also, in the circumstances of this case, interest, not at the rate or for the period claimed by the plaintiff, but at 6 per cent. from the date of the institution of this suit. Their Lordships will, therefore, humbly advise His Majesty that the decree under appeal should be varied in accordance with this opinion, and that the respondent should pay the costs of the plaintiff in both the lower Courts. The costs of this appeal must be paid by the respondent.

In the Privy Council.

THAKURAIN HARNATH KUAR

v.

THAKUR INDAR BAHADUR SINGH.

DELIVERED BY SIR LAWENCE JENKINS.

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