

*Privy Council Appeals Nos. 18 and 19 of 1926.*

*Allahabad Appeals Nos. 23 and 24 of 1923.*

Saiyid Mehdi Ali Khan - - - - - *Appellant*

*v.*

Chaudhri Ghansiam Singh - - - - - *Respondent*

Same - - - - - *Appellant*

*v.*

Kunwar Bharat Singh - - - - - *Respondent*

*(Consolidated Appeals)*

FROM

THE HIGH COURT OF JUDICATURE AT ALLAHABAD.

---

REASONS FOR REPORT OF THE LORDS OF THE JUDICIAL  
COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 15TH JULY, 1927.

---

*Present at the Hearing :*

LORD SINHA.

LORD BLANESBURGH.

SIR JOHN WALLIS.

SIR LANCELOT SANDERSON.

[*Delivered by* LORD BLANESBURGH.]

---

The short question upon this appeal was whether the learned Judges of the High Court of Judicature at Allahabad were justified in ordering, as they did on the 28th May, 1923, that a written compromise of all questions in the suit as between the appellant and the two respondents should be filed and proceeded with. In making this order the High Court differed from the Subordinate Judge at Muzaffarnagar, who, on the 1st February, 1922, had refused to pass such a decree.

Many questions were canvassed in the Courts in India. The issue, however, as presented to the Board, had become a narrow one. The facts on which it depends lie in a small compass.

The respondent, Chaudhri Ghanshiam Singh, is a Hindu of position. Amongst the properties with which he had apparently dealt as his own were two villages—Mauza Dudhli and Mauza Barsu. These he had purported to mortgage with possession to the appellant, Saiyid Mehdi Ali Khan. He had also granted a mortgage over Mauza Barsu to one Lala Ghokal Chand. It is not necessary for present purposes to detail the mortgages over other property granted by Ghanshiam to other creditors, and particularised in the plaint in this suit. It suffices to say that as a result of his borrowing transactions Ghanshiam had, in the early part of 1920, become so gravely embarrassed that in May of that year the appellant instituted against him in the Court of the Subordinate Judge of Meerut a suit to enforce his security over the two villages named. What defences were or would have been raised therein by Ghanshiam their Lordships do not know, because further progress apparently ceased as the result of the institution of this suit by the respondent, Kunwar Bharat Singh, in the circumstances now to be stated.

Kunwar Bharat Singh claims to be the adopted son of Ghanshiam, and as member of the joint Hindu family so constituted to be joint with his adoptive father in, *inter alia*, the two villages above referred to. In that character he applied in Saiyid Mehdi Ali's suit for leave to intervene, alleging that the mortgages of family properties made by Ghanshiam were not made for legal necessity and were not binding upon him. His position as adopted son of Ghanshiam was at once challenged by Saiyid Mehdi Ali as well as by Ghanshiam's other mortgage creditors, and in the result his application for leave to intervene in the suit was refused, and he was informed that his rights must be asserted in separate proceedings.

Thus it was that the present suit was commenced by Bharat Singh on the 20th August, 1920, and since its institution no more has apparently been heard of the appellant's earlier suit. This is not surprising when the wide scope of the present suit is regarded. To it all the mortgagees to whom Ghanshiam had purported to grant security and, in particular, Saiyid Mehdi Ali Khan and Gokal Chand are made defendants. Ghanshiam also is joined as a defendant. By his plaint the plaintiff, Kunwar Bharat Singh, seeks a declaration as to his adoption by Ghanshiam, and he claims that none of the mortgages of family property made by Ghanshiam were made for legal necessity and that they are none of them binding on the family. On the 23rd December, 1920, a written statement by the present appellant, Saiyid Mehdi Ali, was delivered, in which the allegations of the plaintiff are challenged *seriatim* and the appellant sets up that there is due to him in respect of his mortgage upon Mauza Barsu a sum of Rs. 1,00,250, of which full particulars are given in the pleading. It is clear to their Lordships on a perusal of this written statement that it was the purpose, and the laudable purpose, of the appellant to have

determined in the present proceedings all questions as to his mortgage claims whether as against Bharat Singh or as against Ghanshiam Singh, and it is these questions which are the subject of the compromise now in question.

That compromise was brought about by the good offices of Mr. Marsh, the Collector of Muzaffarnagar, and is embodied in a memorandum dated the 2nd November, 1921, signed by the appellant and Ghanshiam, as well as by Mr. Marsh and two other gentlemen friends of the parties who had also intervened to bring about the settlement. The memorandum is fully set forth in the judgment of the High Court, and their Lordships do not consider it necessary to have it again printed. Although it is not signed by Bharat Singh, their Lordships, like the High Court, are satisfied that it was made by Ghanshiam Singh as well on Bharat Singh's behalf as on his own, and with his full authority. In all other respects the terms of the compromise are quite clear. The appellant in effect is to have from both father and son a clean conveyance of 15 biswas of Mauza Barsu in full satisfaction of all his mortgage claims : he is also to pay Rs. 5,000 for part satisfaction of Lala Gokal Chand's mortgage on the same mauza, which is to be so far extinguished that the 15 biswas to be transferred to the appellant may be transferred free of that charge.

It would appear that shortly after he had entered into this compromise the appellant repented of it and refused to be bound by its terms. His objections to it before the learned Subordinate Judge were partly technical, partly substantial. The plaintiff, Bharat Singh, was no party to it : it did not relate to the suit : it was fraudulent : it had not been performed by Ghanshiam. The learned Subordinate Judge was of opinion that no fraud was established and that the breach was that of the appellant and not that of Ghanshiam ; but he held that the compromise could not be recorded under Order 23, Rule 3, because, in his view, the son was no party to it and had only subsequently elected to be bound by it because it was to his advantage so to be.

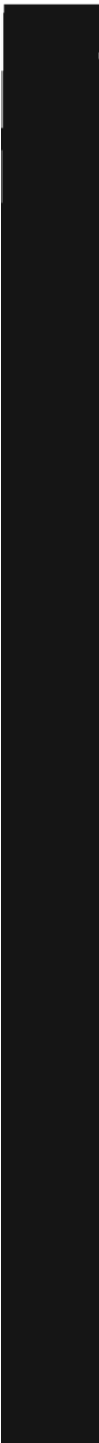
From this refusal the present respondents appealed to the High Court. The learned Judges of that Court, not being satisfied that the allegation of fraud made by the appellant had, on full materials, been disposed of by the learned Subordinate Judge, referred that issue again to him, and after a further full hearing, and, as the Judges of the High Court say, for overwhelming reasons, that learned Judge found again that there was no false or fraudulent representation whatever. For the rest, the learned Judges of the High Court were of opinion that the father had full authority to act on behalf of the son, and that throughout the son was bound by the terms of the compromise. They accordingly directed the compromise to be filed and they prescribed the terms upon which the transaction was to be completed. From that order the present appeal was brought by Saiyid Mehdi Ali Khan.

Before their Lordships the question mainly argued was that the compromise was not a complete and final settlement of the suit so

far as the appellant was concerned : that its terms were not of a character of which specific performance could be granted, and, less strongly, that it was not, *ab initio*, binding upon the son, the respondent Kunwar Bharat.

Their Lordships have been unable to accept any of these contentions. They are in full accord with the learned Judges of the High Court as to the authority of Ghansiam to bind Kunwar Bharat to the compromise in respect of his interest in the property, and in their judgment the terms agreed to are such as to be susceptible in every detail to an effective order in the nature of specific performance against any party to the compromise who seeks to escape from his obligations thereunder. In their Lordships' judgment the terms agreed to entirely dispose of the suit so far as the appellant's interests therein are concerned.

To the details of the order of the High Court no separate objection was raised by the appellant. In these circumstances, their Lordships, as they have already informed the parties, are of opinion that the order of the High Court cannot be disturbed, and they think for the reasons which they have now given that this appeal from that order should be dismissed, and they will humbly advise His Majesty accordingly. The appellant must pay the costs of the appeal.



In the Privy Council.

---

SAIYID MEHDI ALI KHAN

v.

CHAUDHRI GHANSHIAM SINGH.

SAME

v.

KUNWAR BHARAT SINGH.

*(Consolidated Appeals.)*

---

DELIVERED BY LORD BLANESBURGH.