

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Kunwar Raghunath and another v. Nil Kanth and others, from the Court of the Judicial Commissioner of Oudh; delivered 25th February 1893.

Present:

LORD WATSON.

LORD HOBHOUSE.

LORD MACNAGHTEN.

LORD MORRIS.

SIR RICHARD COUCH.

[*Delivered by Lord Morris.*]

This case comes on appeal from the Judicial Commissioner of Oudh, and the Respondents have not appeared to defend it. It is a claim by Kunwar Ram Lal the predecessor of the Appellants to have a sale deed executed and for delivery of proprietary possession of $6\frac{3}{7}$ annas share of certain villages. It appears that one Basant had been the grantee of and in possession of the property in question, and that on his death his widow Mussumat Maikan became the possessor. She died in 1882; on her death one Hira Lal, who was the first cousin of Basant, claimed the property; the first Respondent Nil Kanth, the father of Mussumat Maikan, also claimed. In October 1882 certain persons petitioned the Government, alleging that they were old hereditary zemindars of part of the property and praying to be restored to the possession of it. That petition was rejected on the 8th of

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December 1882, and possession was given by the Government to Nil Kanth and Hira Lal, who had agreed to divide the property in the proportion of $4\frac{4}{7}$ annas to Hira Lal and the remaining $11\frac{3}{7}$ annas to Nil Kanth and other relatives of Mussumat Maikan. The Plaintiff in this suit sought to enforce against Nil Kanth and other relatives of Mussumat Maikan an agreement dated the 3rd of November 1882, Hira Lal, one of the parties to the agreement, not being made a Defendant to the suit on the ground that he was alleged to have performed his part of the agreement. The agreement provided that, in consideration of the Plaintiff having taken upon himself the liability to pay all expenses of the prosecution of the suit of the Defendants and Hira Lal to get possession of the property, they agreed with him that as soon as they were put in possession they would sell to him nine annas share of the property, in lieu of and in consideration of the expenses to be incurred by the Plaintiff in the prosecution of the case. This agreement was signed by the Defendants and Hira Lal.

The District Judge dismissed the Plaintiff's claim, on the ground that the agreement was unfair, that the Defendants were misled into the belief that the expenses would be approximately equivalent to the value of the share agreed to be transferred, and consequently that it would be against public policy to enforce it. The Judicial Commissioner, on appeal, arrived at the same conclusion, but under the prayer for general relief in the petition of plaint he awarded the Plaintiff a thousand rupees as compensation for any expenses legitimately incurred by him.

The English law of champerty is not in force in India, and documents which set up agreements to share the subject of litigation if recovered, in consideration of supplying funds to carry it on, are not in themselves opposed to public policy ;

but such documents should be jealously scanned, and, when found to be extortionate and unconscionable, they are inequitable as against the party against whom relief is sought, and effect should not be given to them. The Plaintiff in this suit was a money-lender, and was dealing with illiterate persons; he must have represented to them the likelihood and the necessity of extensive litigation, a representation unwarranted by the facts; further, the fee paid to the vakil, Bansi Lal, was most excessive, and disproportionate to any work likely to be done by him.

No evidence was given that the assertion made in the agreement of the 3rd of November, to the effect that to recover possession for the Defendants would require large sums of money, was true, or that the Plaintiff had any ground for believing it to be true. In fact, the proceedings were brief and simple. The widow died on the 27th of September 1882; the zemindars' claims were rejected on the 8th of December; the controversy between the widow's heirs and her husband's was settled by agreement before the 3rd of November, and the parties were put into possession in December. In such circumstances their Lordships concur with the view of the transaction taken by the District Judge and the Judicial Commissioner. Their Lordships will therefore humbly advise Her Majesty that the appeal be dismissed.

