Privy Council Appeal No. 39 of 1917.

Idris and others - - - - - - - - *Appellants*

v.

Mrs. Jane Skinner and others - - - - - *Respondents*

FROM

THE CHIEF COURT OF THE PUNJAB.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 1ST NOVEMBER, 1918.

Present at the Hearing:

LORD BUCKMASTER.
LORD DUNEDIN.
SIR JOHN EDGE.

[*Delivered by* LORD BUCKMASTER.]

The appellants in this case are occupancy tenants of the village of Rahanwala in the District of Hissar, and as such they claim to possess and to be entitled to exercise a right of pre-emption in respect of the said village. It is undisputed that they originally enjoyed this right: the question is whether, in the circumstances that have transpired, they enjoy it still.

The first respondent (Mrs. Jane Skinner) was the proprietor of the said village, and she having decided to sell her proprietary interest, placed the matter in the hands of her agent, Bhagwan Das, who notified the occupancy tenants of the proposed sale.

It appears from the evidence that the tenants had not the necessary funds for the purchase, and that certain of them, known as Idris and Naushera, acting, as is alleged, on behalf of the whole village, introduced the other respondents to the said agent as prospective purchasers, at the same time informing him that an arrangement had been come to whereby these respondents should pay the money and acquire the property, which should then be held as three-quarters for them and one-quarter for the appellants. The sale deed was accordingly written out in the presence of Idris and Naushera, and the purchase was completed in favour

of the proposed vendees. It is this purchase which the appellants seek to set aside, asserting that it constituted an unlawful defeasance of their rights.

If, in fact, the transaction was effected in the circumstances and manner described, it is plain that their claim could not succeed unless Idris and Naushera were acting on their own responsibility and without the knowledge or authority of the other occupancy tenants. This, in fact, is the appellants' contention, which they established to the satisfaction of the District Judge of Hissar, who, on the 12th August, 1912, granted them the relief they sought. But the Chief Court of the Punjab, on the 6th April, 1915, reversed this decree, and made, in favour of the respondents, the decree against which the present appeal is brought.

Now the evidence as recorded is abundant to establish the respondent's case. Bhagwan Das, the agent, said that the village was under his supervision, and that, when asked to procure a purchaser, he spoke to the villagers about it. They said they were anxious to purchase, but could not afford the whole of the money, and would try to procure partners, and that they then came to the arrangement to which reference has been made. He stated in plain terms that the plaintiffs, Naushera and Idris, represented the whole of the village in the matter. There were other witnesses who spoke to the same effect, but the learned District Judge regarded the whole of their evidence with suspicion, because they were connected with the vendees. This, of course, is inaccurate with regard to Bhagwan Das, but the learned District Judge thinks that his evidence cannot be trusted because he was the agent of the vendor, and cannot therefore be called an uninterested witness.

Whatever weight might be given to these considerations, if the plaintiffs—and notably Idris and Naushera—had been called to give evidence in answer, it appears to their Lordships to be but slender material upon which to base a judgment that consists in disbelieving the whole story, which, so far as evidence is concerned, is uncontradicted in a single particular.

In cases of this kind the persons engaged in the transaction—and notably the vendors and the vendees—are necessarily essential witnesses, and in the absence of contradiction, to disregard their testimony because they were interested parties is to carry the vigilance, with which the Court ought always to regard interested testimony, beyond all reasonable and trustworthy limits. There appears to be no reason in the recorded evidence to impute collusion or dishonesty to any of these witnesses, and, as their evidence is wholly unanswered, it must in their Lordships' opinion prevail.

There remains the question as to the authority of Idris and Naushera to act on behalf of the remaining villagers, and it was urged before their Lordships that the authority was lacking because some of the villagers were infants, and could not properly confer authority except through the agency of guardians properly appointed through the Court.

This point was not raised in either of the Courts below nor in the case presented upon this appeal, and, in these circumstances, it is not consonant with their Lordships' practice that it should be entertained upon the hearing before them. They ought, however, to add that no authority has been placed before them in support of such a proposition, and it would require very strong and cogent reasons that would compel them to hold that an arrangement so extremely reasonable and wise, and so much in the interest of all the villagers as that effected by appointing, on behalf of the whole village, two or three trusted and responsible inhabitants to act on their behalf, should, in a matter like the present, be held to be bad, simply because one or more of the villagers happened to be an infant.

The point that was urged both in cross-examination and argument as to the lack of authority was that Idris and Naushera had no powers of attorney from the other villagers, but, in their Lordships' opinion, no such power was needed, nor was any reason given why it should be required, apart from this contention their authority does not appear to have been seriously challenged at the trial.

For these reasons their Lordships are of opinion that this appeal must fail, and they will humbly advise His Majesty that it should be dismissed with costs.

In the Privy Council.

IDRIS AND OTHERS

v.

MRS. JANE SKINNER AND OTHERS.

DELIVERED BY LORD BUCKMASTER.

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