PRIVY COUNCIL

Ch. Gur Narayan and others

Vs.

Sheolal Singh and others

P.C.A. No. 21 of 1916
(Lords Atkinson, CJ, Phillimore, Sir John Edge and Mr. Ameer Ali. JJ)

17.10.1918

JUDGMENT

Mr. Ameer Ali J.

1. This consolidated appeal from a judgment and four decrees of the High Court of Calcutta arises but of four suits brought by the plaintiffs in June, 1906, in the Court of the first Subordinate Judge of Gaya. The object of the suit, was to obtain possession of certain specific landed properties which originally belonged to one Ram Dyal Singh, who died so long ago as 1845. These four actions were separately decreed by the Subordinate Judge. On the defendants' appeals the High Court dismissed two of the suits and in the two others varied the first Court decrees. The plaintiffs preferred four appeals to their Lordships' Board which were subsequently consolidated. After the appeals ware filed two of the suits were compromised. The present appeal is thus confined to the two decrees of the High Court in suits Nos. 99 and 101 of 1906, respectively. A short statement of the facts relating to this family will explain the nature of this litigation.

2. Ram Dyal had left him surviving a widow named Birja Kunwar and two married daughters named respectively Sham Sundar Koer and Maha Sundar Koer. It is stated that before his death he had made an oral disposition by which he had devised the bulk of his property to his two grandsons, one named Ajodhya, the son of Sham Sundar, and the other Sheo Charan, the son of Maha Sundar, subject to a life interest in his widow, Birja Kunwar.

3. Both the Courts below have found in favour of this disposition, and it may now be accepted as undisputed that the two grandsons under Ram Dyal's will obtained vested interests in the properties specifically devised to them. The villages which form the

subject of the four suits were given to Sheo Gharan. Birja Kunwar died in 1851, and on her death the properties devised to Ajodhya and Sheo Charan vested in them absolutely. Sheo Charan died in 1852, and on his death the villages devised to him under the will of his grandfather came into the possession of Maha Sundar Koer by virtue of her right to succession as a Hindu mother. Maha Sundar purported to deal with these properties in her lifetime; she borrowed money on mortgages, created mukarraris, and sold several of the villages. Two of the sales form the subject of dispute in the present appeal.

4. Maha Sundar died on the 15th June, 1894, when the succession opened to Sheo Charan's agnatic relations. The plaintiffs claim to have derived title under assignments from the reversioner's, and their case is that the alienation's made by Maha Sundar in her lifetime in favour of the defendants or their predecessors are invalid, as they were not made for purposes which make them binding on the reversioner's. and they accordingly seek to recover possession of the villages purported to have been sold by her to the defendants or their predecessors-in-title. They in their written statements in the two suits raised a number of objections which, in the course of the trial, resolved themselves into the three main points which their Lordships have to determine on this appeal. The relative position of the parties and the nature of these objections will appear from the following pedigree:-

> Jiwan Lal had three other sons, one of whom alone left issue, but his descendants at the time of Maha Sundar's death were more remote to Sheo Charan than the plaintiff's vendors.

5. It will be seen from this pedigree that Sheo Charan's father, Kali Charan, had a grand-uncle of the name of Jiwan Lal. Jiwan Lal's two grandsons, Sheo Sahay and Bal Gobind Sahay, were admittedly the nearest male agnates of Sheo Charan, surviving at the time of Maha Sundar's death in 1894. It will be observed also that Maha Sundar had a daughter, Bhawani Kunwar, who was married to one Tukanath. She appears to have died in 1884, leaving her surviving a son, Hanuman Sahay; and on the 30th April, 1895, Sheo Sahay and Bal Gobind Sahay as the nearest reversioner's, conveyed all their right, title and interest, in the properties in suit to Hanuman Sahay. Hanuman died in February 1906, leaving him surviving the plaintiffs, Gur Narain and Sheo Charan, his sons and heirs. On the 2nd July, 1906, Gur Narain and Sheo Charan conveyed a half share of their interest in the said properties to one Mohesh Lal, and these three persons brought the four suits against the different alienee's of Maha Sundar for setting aside her transactions and for recovery of possession. The

defendants, among other pleas, challenged the right of Mohesh Lal to maintain the action in respect of his share as he was only a *benamidar* for a person named Rafiuddin. Secondly, they contended that as Hanuman Sahay was a party to the conveyance by Maha Sundar in respect of *mauza Arnhara*, he and his heirs were *estopped* from questioning that particular transaction. and they pleaded generally that all the transactions that were impugned were entered into for justifiable necessity.

6. The trial Judge held against the defendants on all points, and made a decree in favour of the plaintiffs. The learned Judges of the High Court of Calcutta, on the appeal of the defendants, have taken a different view. They have held, firstly, that as Mohesh Lal is alleged to be a *benamidar,* his claim in respect of the moiety claimed by him must be dismissed.

7. They also held, differing from the trial Judge, that in respect of the village of Amhara, Hanuman Sahay being a party to the transaction, his heirs, the plaintiffs, were *estopped* from disputing the validity of the sale.

8. With regard to the three villages involved in suit No. 101, they came to the conclusion that a part of the consideration for the sale was proved to have been applied in the payment of debts due from the estate. They accordingly dismissed the claim of the plaintiff No. 3 in suit No. 101, and made a decree in favour of the plaintiffs Nos. 1 and 2 in respect of half of the property conditioned on their payment of 7,500 rupees with interest at 12 per cent per annum to the representatives of the original purchaser, Jai Lal, they on their part accounting for the profits " enjoyed by them in respect of that half."

9. On the question whether a person who has no beneficial interest in the property which stands in his name or is acquired in his name can maintain an action in respect thereof, there seems to be considerable diversity of judicial opinion in India. The system of acquiring and holding property and even of carrying on business in names other than those of the real owners, usually called the benami system, is and has been a common practice in the country. There is nothing inherently wrong in it, and it accords, within its legitimate scope, with the ideas and habits of the people. The rule applicable to benami transactions was stated with considerable distinctness in a judgment of this Board delivered by *Sir George Farwell (Bilas Kunwar v. Desraj Ranjit Singh*[1] Referring to a benami dealing, their Lordships say :- " It is quite unobjectionable and has a curious resemblance to the doctrine of our English law that the trust of the legal estate results to the man who pays the purchase-money, and this

again follows the analogy of our common law that where is made without consideration the use results to the reoffer."

10. So long, therefore, as a benami transaction does not contravene the provisions of the law the Courts are bound to give it effect. As already observed, the *benamidar* has no beneficial interest in the property or business that stands in his name; he represents, in fact, the real owner, and so far as their relative legal position is concerned he is a mere trustee for him. Their Lordships find it difficult to understand why, in such circumstances, an action cannot be maintained in the name of the *benamidar* in respect of the property although the beneficial owner is no party to it. The bulk of judicial opinion in India is in favour of the proposition that in a proceeding by or against the *benamidar*, the person beneficially entitled is fully affected by the rules of *res judicata*. With this view their Lordships concur. It is open to the latter to apply to be joined in the action; but whether he is made a party or not, a proceeding by or against his representative in its ultimate result is fully binding on him. In case of a contest between an alleged *benamidar* and an alleged real owner, other considerations arise with which their Lordships are not concerned in the present case. Here the learned Judges of the High Court, differing from the trial Judge, have held that there were grounds for supposing, or rather suspecting, that the purchase by Mohesh Lal of a moiety of the villages in suit was for the benefit of Rafiuddin, and as he did not join in the action they dismissed Mohesh Lal's claim. Mohesh Lal had persistently denied the defendant's allegation that he was a benamidar for Rafiuddin and had no beneficial interest in the property; nor does Rafiuddin appear to have put forward a claim adversely to Mohesh Lal. In these circumstances it appears to their Lordships that the decree of the High Court dismissing his claim in both suits on the ground that as a *benamidar* he was not entitled to maintain the actions, is unsustainable.

11. The High Court further held that the plaintiffs are *estopped* from questioning the sale by Maha Sundar of the 8 annas share of Amhara, as Hanuman Sahay was a party to the transaction. This village forms the subject of suit 99 of 1906. In support of their view the learned Judges have relied on the provisions of section 115 of the Indian Evidence Act and the general doctrine of equitable *estoppel* embodied in that section, to which their Lordships will presently refer. The High Court also considered that Hanuman Sahay's purchase from the reversioner's accrued to the benefit of Maha Sundar's vendees in consequence of the fact that he had joined with her in conveying the property to the predecessors of the defendants. and they rested their judgment on the equitable doctrine of what is called "feeding the *estoppel*", and on the provisions

of section 43 of the Indian Transfer of Property Act (IV of 1882), which practically reproduces this rule.

12. To consider how far the learned Judges are right in their view on the question of *estoppel*, it is necessary to examine the clause in Maha Sundar's conveyance which is said to create the *estoppel*. It bears date the 19th March '1880, and, as already observed, purports to be executed by Maha Sundar in conjunction with her daughter, Bhawani 'Kunwar, and the grandson, Hanuman Sahay. The description of the vendors is in the following terms:-

> "We are Mussummat Mahasundar Kunwar younger daughter and heiress of Mussummat Birja Kunwar, deceased, widow and heiress of Babu Ramdayal Singh, deceased, inhabitant of mouza Jagarnathpur, pargana Maher, and at present of mouza Sugrigrandi, pargana Pachrukhi; Mussummat Bhawani Kunwar, eldest daughter of Mussummat Mahasundar Kunwar aforesaid and Chowdhri Hanuman Sahai, son of Mussummat Bhawani Kunwar aforesaid and grandson by daughter of Mussummat Mehasundar Kunwar aforesaid, all inhabitants of mouza Samhri, pargana Roh, district Gaya, by occupation *zamindars*."

13. The deed then goes on to say as follows:-

> "Whereas the entire 16 annas of mouza Amhara, appertaining to lot Sugrigrandi.... has been and is in the possession of me, Mussummat Mahasundar, subsequently I, Mussnmmat Mahasundar Kunwar, had granted in gift mouza, Sugrigrandi, Kulna Surajpura, Amhara, Harna Sikaria, Buksouti, Ghazipur and Bahpuri Majrahi,appertaining to the said lot Sugrigrandi, to Mussummat Bhawani Kunwar, my eldest daughter, and Mussummat Gir Kunwar, my youngest daughter, with a view to avoid future disputes under deeds of gift, dated the 28th August, 1868.....in equal shares of 8 annas, with conditions that during the lifetime of mine, Mussummat Mahasundar Kunwar, I shall continue in possession of the same, and that after the death of me, Mussummat Mahasundar Kunwar Mussummat Bhawani Kunwar should get possession of 8 annas and Mussnmmat Gir Kunwar, of the other 8 annas. But the said Mussummat Gir Kunwar died in 1862 and Babu Ram Anugrah Narayan, husband of the said Mussummat Gir Kunwar, deceased, instituted a suit in the Civil Court of Gaya in respect of 8 annas of the said mouzas, and fought the case from the District Court to the Privy Council, and according to the final judgment of the Privy Council, dated the 27th June, 1873, it was held

that I Mussummat Mahasundar Kunwar, one of the executant's, should remain in possession of all the aforesaid properties; that, after the death of me, Mussummat Mahasundar Kunwar, I, Mussummat Bhawani Kunwar eldest daughter, should obtain possession of 8 annas and Babu Ram Anugrah Narayan, husband of Mussummat Gir Kunwar deceased, should obtain possession of the other 8 annas share. In accordance with the same, I, Mussummat Mahasundar, am in possession of 16 annas up to this time, and I, Mussummat Bhawani Kunwar, eldest daughter, and after me Chowdhri Hanuman Sahai son of me, Mussummat Bhawani Kunwar, are entitled to take possession of 8 annas, mentioned in the deed of gift, as absolute proprietor after the death of me, Mussummat Mahasunder Kunwar.....Therefore we, Mussummat Bhawani Kunwar and Chowdhri Hanuman Sahai, have absolutely sold and vended our future proprietary interest and right to possession in 8 annas out of 16 annas of the said mouza Amhara in which we Mussummat Bhawani Kunwar and Chowdhri Hanuman Sahai, have acquired the right of possession after the death of Mussummat Mahasundar Kunwar and I, Mussummat Mahasundar Kunwar, have absolutely sold and vended my life-interest to obtain possession in 8 annas of mouza Amhara, in short, all the right title, and interest of us, the executants, in the 8 annas of the said mouza Amhara."

14. It is to be noticed that in this document Maha Sundar makes no reference to the fact that the properties were in her possession as a Hindu mother by right of succession to her son Sheo Charan. She describes herself as the " daughter and heiress" of her mother, Birja Kunwar, and claims to be absolutely entitled to the property in question, and purports to deal with it as such. It cannot be said that this misdescription or assumption of absolute ownership could possibly have misled the purchaser. For the proceedings in the suit of Anugrah against Maha Sundar and the decision of this Board in *Ramanugra Narain v. Mahatundar Kunwar*[2]. are recited in the conveyance in question. Their Lordships in that case expressly confined the adjudication to the parties to the suit. They did not enter upon a consideration of the question whether Maha Sundar had the power to make the gift or gifts which were in controversy in that action. The declaration made by the Board could not enlarge the power of Maha Sundar to deal with the properties she held as the heiress to her son to the prejudice of the son's reversioner's. The vendee was entering into a transaction with a Hindu female. It lay upon him to acquaint himself with the extent of her powers. He was in full possession of the proceedings in Ram Anugrah's suit and the facts connected with the Mitakshara family. The evidence of his witnesses shows that

enquiries were made on his behalf and that he had even some legal advice. Whether these measures were adopted with the object of creating grounds of defence in some future action by reversioner's or were *bona fide* enquiries, their Lordships have little doubt on the facts that the Mahant purchaser had full knowledge of the powers and disabilities of the vendor. At this time Hanuman had no interest of any kind in the property. Maha Sundar had held it as a Hindu mother by right of succession to her son Sheo Charan. On her death it would pass to his heirs. Hanuman's mother was alive at the time of the sale; whatever interests they had were of a purely contingent character. It is quite evident that they were joined as parties to the conveyance at the instance of the vendee as a piece of precaution. Whether the vendee entered into the transaction in the belief that Maha Sundar's title was derived, as she described in the sale deed, from her mother, or whether he knew, as is more probable from the circumstances, that she was in possession of the property as heiress to her son, he must have known that Hanuman had no assignable interest which he could convey or the assignment of which he could assure to the purchaser. His interest, if it can be so called, in either view of the facts, was a mere expectancy, contingent, firstly, on his mother surviving Maha Sundar, and, secondly, on his surviving his mother. His association in the deed of sale was in their Lordships' opinion, wholly futile and had no legal effect in validating the transaction if otherwise invalid. The High Court have rested their judgment on the question of *estoppel* on the provisions of Evidence Act, section 115, (Here the section was quoted) there is absolutely no evidence that the vendee was induced to alter his position in any respect in consequence of Hanuman's representation contained in the deed of conveyance. The Subordinate Judge in his able judgment has given abundant reasons for holding that in the whole transaction Hanuman must have been a mere passive instrument in the hands of his elders, and that his so-called statement could not have materially influenced either the vendor's or the vendee's conduct in the matter.

15. As regards the theory that Hanuman's subsequent purchase of the property in 1895 from the reversioner's should accrue to the benefit of the purchaser from Maha Sundar, it is based on the assumption that what happened in 1880 created an estoppel against Hanuman. In their Lordships' opinion there is no estoppel. Besides, it should be observed that Hanuman did not acquire the property as a contingent reversioner to Maha Sundar. The title on which the plaintiffs have brought their suit is based on an independent purchase by Hanuman from the rightful heirs.

16. Their Lordships are of opinion that the view of the learned Judges on the question

of estoppel cannot be sustained.

17. Suit 101 relates to three properties called respectively Thali Khurd, Budhwara and Korianna, which were sold by Maha Sundar in 1854 for alleged legal necessities to the predecessors of the present defendants. The sale deed is not forthcoming, and some evidence has been given of its loss which the High Court have accepted, and their Lordships are not prepared to dissent from their decision that the defendants had proved the sale of 1854. Their Lordships further agree with the learned Judges that legal necessity to the extent found by them has been established. In the result, therefore, their Lordships are of opinion that in suit 99 of 1906 (Appeal 2 of 1911) the decree of the High Court should be reversed and that of the Subordinate Judge restored; and that in suit 101 of 1906 (Appeal 3 of 1911) the decree of the High Court should be varied by the inclusion of the name of Mohesh Lal, and that the decree should be in favour of the three plaintiffs (including Mohesh Lal) to the full extent of the properties claimed, subject to the payment by the plaintiffs to the defendants of 7,500 rupees under the terms and conditions set forth in the decree of the High Court. The appellants are entitled to their costs of this appeal, and of the appeal to the High Court in suit 99. In the appeal to the High Court arising out of suit 101, they will get their costs as decreed by that Court. and their Lordships will humbly advise His Majesty accordingly.

Order accordingly.

Cases Referred:

1. [1915] 37 All. 557 : 30 I.C.299 : 42 I A.202.
2. [1873] 12 B.L.R. 433 : 3 Sar. 277 (P. C)