

## **PRIVY COUNCIL**

Kamawati

Vs.

Digbijai Singh, Defendant

Privy Council Appeal No. 2 of 1920  
(Lords Shaw, CJ, Phillimore and Mr. Ameer Ali. JJ)

21.6.1921

### **JUDGMENT**

#### **Lord Shaw J.**

1. This is an appeal from a judgment and decree, dated January 30, 1917, of the Court of Judicature for the North-Western Provinces at Allahabad, which reversed a judgment and decree of the Additional Subordinate Judge of Moradabad, dated August 12, 1915.
2. The suit was instituted by the appellant, as the sister's daughter of one Kunwar Randhir Singh Sahib, deceased, to recover from the respondent (who, as his surviving brother, was in possession of his estate) a one-twelfth share of that estate. To this one-twelfth share the appellant would be entitled to succeed under the provisions of the Indian Succession Act. This would be so, Kunwar, Randhir Singh having died a Christian, and the Act accordingly regulating the succession to his estate. An argument will be hereafter noted which challenges this proposition and alleges that in the circumstances of Randhir and his family, it must be concluded that the Indian Succession Act does not apply to his case, and that the succession to his property is governed by the Mitakshara law.
3. The defendants, however, substantially found their case upon the existence of a deed, dated April 29, 1912, whereby the plaintiff is alleged to have relinquished all her rights in respect of her inheritance. It is part of the plaint accordingly to have this deed declared invalid. Its annulment was decreed by the Subordinate Judge, but the High Court have upheld it.
4. The deed is short, and is in the following terms:-

"

, By the pen of Abdul Karim, scribe."

5. The deed is We, Kameshar Nath, son of Chaudhri Bhagwan Singh, Taga by caste, old resident of Saharanpur, at present residing in Tajpur district Bijnor, Bibi Kamawati, wife of Kishor Singh, Taga by caste resident of Alauddinpur, district Bijnor, and Bibi Bhagwati, widow of Sher Singh, deceased, Taga by caste, at present residing in Tajpur, district Bijnor declare as follows :

"As regards the property left by Kunwar Randhir Singh, deceased 'rais' of Sherkot district Bijnor, there was a dispute between his own brother Kunwar Digbijai Singh and Mussamat Hira Dei. The matter was amicably settled and a compromise was written on the 27th of October 1908, and registered in the office of the Registrar of district Moradabad on the 31st of October 1908 : Under it monthly allowances were also fixed for us, the executant's, out of the estate of Kunwar Randhir Singh. Now there is again a dispute about Kunwar Randhir Singh's estate between the aforesaid two persons. and it is alleged on behalf of Mussamat Hira Dei that that we too have a right in the estate of Kunwar Randhir Singh. Therefore admitting the compromise dated the 27th of October 1908, we, executant's while in a sound state of mind, and without being tutored or induced by any one, willingly and voluntarily covenant and write that except the monthly allowance of Rs. 50 assigned to each of us executant's, Nos. 1 and 3, and the monthly, allowance of Rs. 100, assigned to me, executant No. 3 by Kunwar Digbijai Singh, of his own accord, according to the custom of the family and estate of Kunwar Randhir Singh, deceased, under that aforesaid compromise, we have no claim of inheritance, etc., in the estate of Kunwar Randhir Singh. Kunwar Digbijai Singh is the owner of the entire estate of Kunwar Randhir Singh, rais of Sherkort, district Bijnor. We have, therefore, executed this deed of relinquishment in respect of every kind of property left by Kunwar Randhir Singh, that is in respect of zamindari property and house, etc. in order that it may be of use in time of need. If any of our representatives lay claim at any time, it shall be false.'

"Dated the 29th April, 1912 signed -

*"Kameshar Nath Sinha.*

*"Kamawati, in autograph.*

*"Bhagawati, in autograph."*

6. It will be observed that the sole consideration for this relinquishment by the appellant of her share in the estate is a monthly allowance of Rs. 50 which is said to

be "by Kunwar Digbijai Singh, of his own accord according to the custom of the family."

7. It is abundantly proved that during the life-time of the deceased, and since his death there was according to custom given this trifling maintenance allowance to this lady, and the insertion of it in the deed was simply the insertion of the only possible item that was available which would stand as the semblance of a consideration for the document.

8. It is essential in such cases to consider what was the relation in which the parties stood to each other, because, for the reason so clearly pointed out (especially in the judgment of Viscount Haldane) in *Norton v. Ashburton*,<sup>1</sup> there may, quite apart from any question of fraud or of conduct partaking of the quality of fraud, arise from these relations an obligation by the one party towards the other, the failure to fulfill which obligation, will be a ground for rescission of the contract and for the consequent remedies.

9. The point is clear and need not be labored in Lord Haldane's language :-

"Such claims raise the question whether the circumstances and relations of the parties are such as to give rise to duties of particular obligation which have not been fulfilled,"

10. There Lordships hold this doctrine to be imbedded in the law of both of this country and of India. It is, however, an interesting question to see how the essentially equitable principle which it expresses, applies to the relations of parties in the present case.

11. So far as the appellant is concerned, one outstanding fact to begin with, is that she is a pardanishin lady, and the deed was signed within the parda. In the second place, she is married, but her husband was not communicated with, when her signature was obtained, nor were the merits or expediency of any such transaction discussed with him. In the next place, the lady, while relinquishing her entire share in a valuable estate (her twelfth being estimated at roughly between Rs. 20,000 and Rs. 30,000), had no separate advice in the transaction whatsoever. Finally the deed was framed by or by the authority of Digbijai Singh, a coheir in the property and also the possessor of the whole of it, and Digbijai took no steps or precautions in the direction of having independent advice of any kind furnished to the lady who was relinquishing all her property in his favor.

12. The deed, in short, is a deed substantially without any consideration by a donor of her entire property in favor of a donee who, or whose representatives, submit the prepared document to her and obtain, within the purdah, her signature. It is the established law of India in these circumstances that the strongest and most satisfactory proof ought to be given by the person who claims under a sale or gift from them, that the transaction was a real and bona fide one, and fully understood by the lady whose property is dealt with. The cases upon the subject were discussed and the law as thus cited was repeated in *Sajjad Hussain v. Wazir Ali Khan*,<sup>2</sup>

13. When, however, the law is that the donee must fully understand the transaction, this is but a secondary way of saying that it is the obligation of the donee in any transaction proceeding from her to see that she does so understand it. The relations of parties demand that this duty be performed, and when Courts of law declare that the onus rests upon the donee of showing that he did so, that of course, is founded upon the fundamental fact that it was his duty to do it. If accordingly this obligation thus arising out of relations of the parties be not fulfilled, the case for rescission and consequent remedy is clear.

14. These principles apply to the present suit, which while leaving the case important, very largely remove all difficulties from it, and had it not been for the judgment of the High Court, to which allusion will presently be made, it would have been unnecessary for their Lordships to deal with the subject in more than a few further words.

15. The potent consideration which assists the mind in this case is that the appellant whose deed is under challenge not only is not proved to have had explanations in the full sense required by law of the effect and purport of the deed, but it seems also to be beyond question that she had no knowledge whatsoever of the extent of the property to which she was relinquishing all right. The Board inclines to the view that all that was ever given was an explanation of her being asked to make her sure of always getting Rs. 50 a month. But the fact that Randhir Singh was a Christian, and that, consequent upon that his intestate estate fell to be distributed under the Indian Succession Act, and that - further consequent upon that - she was entitled in her own right to one-twelfth of that wealthy person's estate - not one of these facts was ever brought home to her mind or even suggested. It is quite unnecessary to pursue the details, because this outstanding feature of the case makes it impossible to sustain a transaction in which the duty of disclosure, resting upon the donee, was clearly not discharged. The deed of relinquishment was taken from her when in point of fact she did not know what she was giving away.

16. There are many other elements in the narrative which would produce points of attack upon the deed: but their Lordships content themselves with holding that in substance they are in agreement with the judgment of the learned Subordinate Judge who has analyzed the case with great patience and reached upon what in the view of the Board, is a sound conclusion.

17. With regard to the judgment of the High Court, it would further appear that the learned Judges would have been entirely of the same opinion with regard to the deed in issue, viz., that of the 29th of April, 1912 had it not been that they were in their view compelled to a different conclusion by reason of occurrence four years earlier. They say, in short:-

"We think that if nothing happened prior to the 29th April, 1912, the plaintiff would have been entitled to far more time for reflection and to independent advice before she could be called upon to execute a deed relinquishing her rights. The learned Judge seems to have approached the consideration of the case having regard only to what occurred in 1912. If this is the proper point of view from which to approach the consideration of the case we think that the decision of the Court below might be correct."

18. It is necessary accordingly to consider what had happened in the year 1908. In the opinion of the Board there is not sufficient justification for the reflection made upon the Subordinate Judge by the High Court that he has approached the consideration of the case without having taken fully into view what had happened in that earlier year. On the contrary, in view of this reflection, their Lordships have carefully considered the judgment of the Subordinate Judge and have been struck with the careful review which he gives of all the circumstances which occurred in that year leading up to and including the preparation of a deed of relinquishment. Their Lordships agree with that analysis. That deed of relinquishment was, equally with the one under consideration (viz., that of 1912), the subject of the obligations of disclosure, independent advice, and the like, which have already been alluded to; and, as in the later case, there is no trace of the obligation having been fulfilled or even regarded. Furthermore, neither she nor her husband signed it. Her name appears upon it as that of an attesting witness, but she denies her signature.

19. The deed of October, 1908, was the subject of discussion in the judgment delivered by Sir John Edge on this Board on the 21st of May, 1917. It appears that a copy of it was alleged to have been made upon stamped paper :

" It has been traced to the possession of the defendant, who has given no satisfactory explanation as to what has become of it," and strong observations were made as to the untrustworthiness of Digbijai's account.

20. So far as the effort made in 1908 was concerned it failed, and the interests of the wife of Kanwar Randhir Singh were separately upon as having either been the means of conveying the requisite information to the appellant of her rights or of extracting from her any relinquishment thereof. Probably if the attention of the High Court had been more fully directed to those parts of the Subordinate Judge's opinion which have just been alluded to his judgment on the whole case might have been affirmed. In the Board's opinion that judgment was right.

21. It is only necessary in a few words to allude to an argument submitted to the Board by the learned counsel for the respondent, the object of which seemed to be to suggest that, even accepting the view that the deceased was a Christian, still he had by his acts made such an indication as the law would respect, to the effect that his succession was not to be governed by the Indian Succession Act. Their Lordships can give no countenance to such a principle. It is unavailing to quote the case of *Abraham v. Abraham*<sup>3</sup> or *Sri Gajapathi Radhika Patta Maha Devi Garu v. Sri Gajapathi Nilamani Patta Maha Devi Garu*<sup>4</sup> These preceded the Indian Succession Act and cannot modify or interpret it.

22. By Section 2 of that Act, it is enacted:-

"Except as provided by this Act, or by any other law for the time being in force, the rules herein constitute the law of British India applicable to all cases of intestate or testamentary succession."

23. This is the general rule, and the exception which bears upon the present case is section 331, which says that:

"The provisions of this Act shall not apply to intestate or testamentary succession to the property of any Hindu."

24. If, accordingly the late Randhir Singh had remained in or become a convert to Hinduism, the exception would apply.

25. The question accordingly is, was the late owner of this estate, or was he not, a Hindu? If he was, the Mitakshara law would apply. If he was a Christian, the Indian Succession Act rules would apply. The matter has been fully investigated. Among other things, for instance, in the words of the Subordinate Judge:

"The plaintiff has proved the baptism, marriage and burial certificates of the deceased; vide evidence given by the Chaplains Father J. Chrysostom and Father Angelo and by F.O. Neill, Barrister-at-Law. The above evidence proves beyond doubt that Kunwar Randhir Singh in his latter portion of life was a Christian and died as a Christian".

26. It is unnecessary to dwell upon the subject, because in a former litigation the respondent himself admitted these facts.

27. But the argument is that, notwithstanding this the Hindu law of succession shall apply to this deceased's estate. A situation of nothing but confusion could be thus produced. The plain law of the Succession Act would be eviscerated, and in each case inquiry might have to be entered upon as to whether a deceased subject of the Crown wished or by his acts compelled that the law of the land should not apply to his case. A particular subject can settle that in India, as in other parts of the Empire, by exercising - whatever be his religion - his power of testacy declaring how he desires his affairs to be regulated so far as his own individual property is concerned. In this case Kunwar Randhir Singh did not do so, and it is not for a Court to enter upon an examination of his conduct so as to prevent the Indian law of intestate succession getting its full and proper application.

28. Their Lordships will humbly advise His Majesty that the appeal should be allowed, that the judgment of the Subordinate Judge should be restored, and that the respondent should pay the costs of the appeal.

Appeal allowed.

Cases Referred.

1. (1914) AC 932 : 30 TLR 602 : 83 LJ Ch 784 : 11 LT 641
2. (1912) 34 All 455 : 39 IA 156 : 16 CWN 889 : 10 ALJ 364 : 14 Bom LR
3. 1055 : 23 MLJ 210 : 15 OC 271 : 161 IC 197 : 1912 MWN 976 (PC).
4. (1868) 9 MIA 195 : 1 Suther 501 : 19 ER 716 : 1 WR PC 1 : 2 Sar 10 (PC)
5. (1869) 13 MIA 497 : 6 BL RPC 202 : 2 Suther 365 : 14 WRPC 33 : 20 ER 637 : 2 Sar 601 (PC).