

## PRIVY COUNCIL

Rajkumar Sen Choudhury

Vs.

Ram Sundar Shaha

P.C.A.No.89 of 1929

(Viscount Dunedin, Lord Blanesburgh and Sir John Wallis JJ.)

15.12.1931

### JUDGMENT

#### SIR JOHN WALLIS J.

1. Disputes about the dispositions and contracts of people of advanced age and failing powers are always difficult cases to decide, and the difficulty is greatly increased when, as in the present case, the record has swollen to enormous size owing to the way in which the examination of the witnesses on commission was protracted, assuredly not in the interests of the parties. A scandalous instance of this abuse is to be found, as observed by the learned Judges of the High Court, in the examination of *Ananda Roy*, the principal witness for the plaintiffs, which takes up two hundred and twenty-six pages of the record, and contains twelve hundred and fifty questions and answers, most of which, as admitted at the trial by the vakils on both sides, were quite irrelevant to the suit.

2. In another appeal with an enormous record from the same High Court it was recently stated that the cross-examination on commission of a pardahnashin lady lasted for a hundred days. In their Lordships' opinion it is imperative that an abuse of this kind, which enormously increases the costs of litigation without any corresponding benefit to the parties, should be checked, and it would appear to be clearly within the powers of the High Courts to direct an inquiry with a view to disciplinary action in flagrant cases which come under their notice at the hearing of appeals.

3. The question in the present case is whether the plaintiffs are entitled to obtain specific performance of a registered bainapatra or agreement to sell the suit properties executed by *Kali Narayan*, the father of defendants 1 to 4, who have been brought on

after his death with his other descendants in the male line as his legal representatives, and the main defence is that he was then of unsound mind for the purpose of making a contract, within the meaning of section 12 Contract Act, as being, at the time he made it, "incapable of understanding it and of forming a rational judgment as to its effect upon his interests."

4. There were also allegations of conspiracy on the part of the plaintiffs, as to which it was admitted at the hearing of the appeal in the High Court that there was no evidence.

5. The plaintiffs' case, which has been accepted by the High Court is, on the face of it, a perfectly straightforward one. They are traders who had made money, and coming to know in the middle of 1920 that the suit properties were for sale, they entered into negotiations for purchasing them. The properties consisted of two small zamindaris, one in the Dacca and the other in the Tipperah District, together with a five annas share of a shikmi taluk in one of these zamindaris, which Kali Narayan, the zamindar, had acquired, the remaining eleven annas belonging to the Majitpur Babus, who were the shikmi talukdars. The Majitpur Babus were naturally anxious to regain the sole ownership of the taluk, and came forward with counter-offers. Ananda Chandra Roy, an old friend of Kali Narayan, who was advising him about his affairs, was for asking thirty-five years' purchase, subject to certain deductions. This was apparently a very good price, and, probably, as usually happens, a little more than was hoped for. The offers of the plaintiffs and the Babus fell far short of this, and the negotiations went off. In October the properties were publicly advertised for sale, and in December the plaintiffs came forward with a new offer of thirty-two years' purchase. It was refused, and they were going away when Kali Narayan's wife suggested that they should increase their offer to thirty-three years' purchase. Kali Narayan accepted this offer subject to Ananda's approval, which the plaintiffs obtained. Ananda says he thought it a very good price, as it apparently was. A bainapatra or agreement to sell was then drawn up by Basanta, the estate lawyer, and was executed by Kali Narayan, who signed in eleven places. It was witnessed by Basanta, the estate lawyer, by Bhupati, Narayan's son, who was residing in the house, and now says he did not know what the deed was about, and by several other persons. It was then registered by the Registrar of Dacca, who came to the house and obtained Kali Narayan's admission of execution.

6. Coming to know of the bainapatra, the Majitpur Babus, in their anxiety to become the sole owners of the taluk, or possibly because they did not care to have mere traders as cosharers, offered 40 years' purchase, three of which were to go to the almos or

estate servants for their part in bringing about the sale. With this incentive Kali Narayan's estate manager, Durga Sankar, and the estate lawyer, Basanta, exerted themselves to induce the plaintiffs to abandon the contract on terms, but without success. Boy, J., also surmises that it was thought that the plaintiffs, who were traders, ought to stand aside in favour of the Babus.

7. The plaintiffs' case is that this counter-offer was the sole reason why the transaction did not go through, and that to get out of their bargain the defendants falsely charged the plaintiffs with conspiracy and set up that Kali Narayan was an imbecile dotard when he signed the bainapatra and did not know what he was doing.

8. This contention of the plaintiffs receives some support from the fact that no suggestion of the kind was made during negotiations after the bainapatra, and that the defendants confined themselves for a considerable time to an attitude of passive obstruction. When the plaintiffs, after repeated applications for the particulars necessary for the sale deed, at the house in Dacca where Kali Narayan was then residing, served notices by registered post upon Kali Narayan himself and on his manager, Durga Sankar, these notices were not accepted and were returned by the postal authorities to the senders. Early in January Kali Narayan went back to his house in Bandar and the plaintiffs went down and were refused admittance. On 31st January 1921, they went down again with a pleader and tendered the balance of the purchase money, which was not accepted.

9. They saw Kumar Krishna, the principal defendant, and Durga Sankar, the manager, and were kept waiting for nearly an hour, when they left to catch their train. They had heard Kali Narayan and his wife talking upstairs, and called out to them as they were going away, but without result. They were not told that this defence was to be raised, or that a few days previously the Civil Surgeon of Dacca had been brought down to Narayangunje on two successive days and, to save time, being a busy man, had seen Kali Narayan in a boat in the river, and had certified that he was incapable of managing his own affairs and was not malingering or feigning loss of memory. An interview with Kali Narayan and his wife at this stage might have given the plaintiffs an opportunity of giving evidence contesting these conclusions, and it was not allowed to take place.

10. Eventually, on 30th June 1921, the plaintiffs filed the present suit against Kali Narayan for specific performance in the Court of the First Subordinate Judge of Tipperah at Comilla, setting out the contract and the efforts they had made to get the

sale deed executed. An application was then made on behalf of the defendant for the appointment of a *guardian-ad-item*, on the ground that he was unable himself to defend the suit. The Subordinate Judge saw and questioned him and made the order, though he was not sure whether the confusion in Kali Narayan's answers was wilful or bona fide. After the *guardian-ad-item* had filed a written statement and issues had been settled, the High Court set aside the order appointing a *guardian-ad-item* and directed the Subordinate Judge to hold a judicial inquiry as to Kali Narayan's mental condition. Lieut.-Col. MacKelvie, who was the Civil Surgeon of Dacca, was examined for the defendant, and Dr. K. B. Narayan, Civil Surgeon of Tipperah, was examined on behalf of the plaintiffs, but before the inquiry was completed Kali Narayan died, in July 1922, and the suit was continued against the present defendants as his legal representatives with substantially the same pleadings and issues.

11. The principal written statement is a very lengthy document, setting out as it does, not only the defendants' contentions, but also much of the evidence on which they intended to rely. Shortly, their story was that Kali Narayan had for many years been in his dotage and had left the management of his property to his sons, and that his favourite son-in-law, Satish Chandra, a kabiraj or doctor practising Hindu medicine at Dacca, who was on bad terms with the rest of the family, had by means of false allegations in a petition to the Subdivisional Officer, procured the removal of Kali Narayan from his own home at Bandar to Dacca and had got him to execute a registered will in his favour, although he was then like an inert mass, and a mere puppet incapable of understanding what he was doing. Subsequently, Satish Chandra had conspired, it was alleged, with the plaintiffs and others to get a sale deed in favour of the plaintiffs from Kali Narayan at a gross undervalue. It was further denied that Rs. 11,000 deposit mentioned in the deed had been received by Kali Narayan, and it was also alleged that Satish Chandra was to get Rs. 15,000 from the plaintiffs for his services in obtaining these properties for them at an undervalue. They also alleged that the bainapatra was bad for vagueness and uncertainty.

12. The following were the material issues:

"5. Was Kali Narayan incompetent to enter into the contract referred to in the plaint ? Was he incapable of understanding the terms and stipulation of the bainapatra or of forming a rational judgment as to its effect upon his interest at or before the time of its execution ?

6. Has the said bainapatra been secured by plaintiffs by undue influence, fraud and unfair means ?

10. Is the contract bad for vagueness and indefiniteness ?"

13. The Subordinate Judge found all these issues in favour of the defendants, gave the plaintiffs a decree for the return of their deposit of Rs. 11,000 with interest, and otherwise dismissed the suit.

14. The plaintiffs then appealed to the High Court at Calcutta, who allowed the appeal and decreed the suit.

15. At the hearing of the appeal it was admitted by the defendant's counsel that there was no evidence on which a finding that the plaintiffs had been a party to any conspiracy could be based. This of itself greatly detracts from the weight of the Subordinate Judge's judgment. Further, he failed to see that, as admitted before their Lordships, if the principal witnesses for the plaintiffs are to be believed, and he did not find they were not, they abundantly established that Kali Narayan was of sound mind during his stay at Dacca, where the bainapatra was executed.

16. It has however been contended by Mr. de Gruyther for the appellants here that the learned Judges, in accepting the evidence of these witnesses, failed to attach sufficient weight to medical evidence, which he contends shows clearly that Kali Narayan was of unsound mind during the whole of his stay at Dacca, and that the witnesses who depose that he was not unworthy of credit. That is really the question on which their Lordships are now called upon to decide after hearing it argued for several days and giving it their anxious consideration.

17. At the end of 1919 Kali Narayan was undoubtedly an old man, who had long been in bad health and had for several years left his sons to manage his affairs. He was no longer the man he was, but was depressed and his memory was bad. It was said by one of the medical witnesses that loss of memory in elderly people means incipient senile dementia, and in the case of Indians sets in at forty. Happily, even if this be so, it does not usually reach such a stage during the lifetime of the individual as to unfit him for the management of his own affairs, especially if he is wise enough not to rely on his own judgment, but to act on the best advice available. This, the learned Judges have found, is precisely what Kali Narayan did in this transaction.

18. The defendants' case is that at this time he was an imbecile dotard, incapable of forming any judgment of his own, and that his wife and his son-in-law Satish Chandra were anxious to get him to Dacca to execute documents to the prejudice of his sons. The plaintiffs' case is that he wanted to make reasonable provision by will for his daughters and daughters' sons, who would have taken nothing if he died intestate, and

that he was also very anxious about the condition into which his affairs had been brought under his sons' management and the mortgages he had to execute. (The judgment after considering certain events proceeded). Their Lordships have already stated and will not repeat the circumstances under which the bainapatra came to be executed. The defendants now go so far as to assert that they never knew of any proposal to sell these properties till afterwards, although negotiations had been going on for months, the plaintiffs had been down to Bandar to see the manager, Durga Sankar, and inspect the properties with a view to purchase, and they had been publicly advertised for sale. It is further proved that the defendants were frequently at the parents' home in Dacca, and no doubt whilst "keeping quiet," knew perfectly all that was going on. As already stated, the bainapatra was witnessed by one of the defendants, Bhupati, whom it was sought at the trial to represent as a simpleton. The fact that the manager, Durga Sankar, was absent on account of a funeral ceremony in his family when the bargain was finally struck and the deed executed is of no consequence, as the previous negotiations had been with him, and the price was approved by Ananda, on whom Kali Narayan relied. Comment has also been made on the fact that the plaintiffs did not call Satish Chandra, the son-in-law, who was included in their list of witnesses. One of the executors of the will who was going to give evidence for the plaintiffs, had a conversation with Satish shortly before the trial, which left him under the impression that Satish thought the plaintiffs had a good case and would succeed. He would probably not have been sorry, having regard to the imputations which had been made against him. Nothing however was then said about his giving evidence himself. It was the interest of his wife's family to get out of the bargain, and he may have been reluctant actively to oppose them. The plaintiffs were probably wise in not calling him.

19. Witnesses have been asked if Kali Narayan could have understood all the terms of the bainapatra, but that was unnecessary. It was enough if he knew he was selling his property on terms approved by his protector Ananda by a document prepared by the estate lawyer. In India, as here, it is enough for the executant of a legal document to understand the nature of the transaction, leaving the details to his lawyer.

20. As to his state of mind at the time, the evidence of witnesses, which there is no reason to distrust, shows that during his stay in Dacca, though an infirm old man, he was not destitute of understanding, feeling or manners. The leading Indian doctor who attended him for rheumatism and heart disease says he saw him frequently, and noticed nothing wrong with his mind. When one of his daughters died, he felt it so

deeply that he insisted on moving to another house. His wife had an apoplectic fit, and, when she had got over it, a choleraic attack. He was so grateful to the doctor who cured her that he insisted on giving him a dinner, and himself came down and observed the courtesies usual on such occasions. When there was an election of the Legislative Council he went to the voting place and recorded his vote. He inquired where the mark was to be made, and the polling officer saw nothing wrong with him. The defendants' story that at this time he was paralyzed and unable to move is clearly disproved by this evidence. Lieut.-Col. Newman, who examined him subsequently for the purpose of these proceedings, on behalf of the defendants, says that he saw him on a few occasions when attending his wife, and that he seemed morose and scarcely spoke to him, but he was then in great trouble and there was the difference of language. There is no doubt he then suffered from time to time from severe attacks of angina pectoris, and it is not unlikely, that owing to their anxiety to help Kali Narayan himself and his family to escape from what they were told was an unconscionable bargain, there was much exaggeration in their evidence.

21. Their Lordships agree with the learned Judges that the evidence as to Kali Narayan's stay at Dacca goes to show that he was of sound mind when the bainapatra was executed, and that, as already shown, this conclusion is strongly supported by the defendants' own conduct down to the time when the present dispute arose. (After considering the medical evidence regarding the insanity of Kali Narayan produced by the defendants, their Lordships concluded). The two learned Judges of the Calcutta High Court, who from their intimate acquaintance with Hindu modes of life are in a better position than their Lordships to draw the proper inferences as to some matters of conduct arising in the case, have given : forcible reasons in separate but concurring judgments for holding it proved by reliable evidence and by inferences arising from the conduct of the defendants themselves that Kali Narayan at the time he executed the bainapatra was not an imbecile dotard incapable of sufficiently understanding what he was doing, and their Lordships are not prepared to say they were wrong in acting upon this evidence rather than on medical opinion possibly influenced by all sorts of unproved allegations going to show that he could not have at the time in question been sufficiently able to understand what he was doing. In these circumstances their Lordships are unable to differ from the conclusion of the learned Judges that the defendants have failed to establish the main defence they set up.

22. As to the further defence that the contract itself is bad for uncertainty, they entirely agree with the learned Judges that there is no substance in it. They are therefore of

opinion that the appeal fails and should be dismissed with costs, and they will humbly advise His Majesty accordingly.

Appeal dismissed.