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Court : Allahabad

Decided On : May-05-1919

Reported in : (1919)ILR61All611

Judge : Piggott and ;Walsh, JJ.

Appellant : Parmal

Respondent : Chahlu

Judgement :

1. This appeal must be allowed. The facts are that one Khaman, who died many years ago, left surviving him four sons, Parmal, Hazari, Gokul and Pransukh, who divided his property amongst themselves. Hazari, the second son, died first leaving surviving him a widow named Musammat Mulo, who subsequently was married to the eldest son, Parmal. Afterwards Pransukh died without issue, leaving a widow, Musammat Indo. A question having arisen as to the legal effect of the remarriage of Musammat Mulo, the two surviving brothers came to an arrangement by which, in consideration of his being allowed to retain the property of Hazari, Parmal, the present) plaintiff, agreed to make no claim against Gokul to the property of Pransukh on the death of the widow, Musammat Indo. This arrangement was drawn up in a deed, dated June, 1897, duly executed and registered. This deed has given rise to the question of law we have to decide. Musammat Indo died in 1918. Parmal brought this suit against the defendant, the son of Gokul, for the share of Pransukh. The defendant set up the agreement of 1897.

2. The learned District Judge has found that there was a bond fide dispute and that the agreement, if legal, is binding. So far as this is a finding of fact we are bound by it. As a matter of law the existence of a bond fide dispute has always been held to be good consideration sufficient to support a contract, even though the claim which caused the dispute turns out afterwards to have had no foundation. In other words, a family compromise or arrangement, as it is generally called in this country, is good as a contract and binding upon the parties to it and their successors, if it is founded upon a bond fide dispute.

3. The learned District Judge has dismissed the suit on the ground that the contract amounts to an attempt to transfer the chance of an heir apparent succeeding to an estate, and is therefore illegal under Section 6(a) of the Transfer of Property Act. On appeal to this Court our brother Rafiq referred this question to two Judges, as being one upon which judicial decisions in India have not always been consistent.

4. Apart altogether from authority, I am unable to agree with the view of the court below. Reading Sections 5 and 6 together, it is clear that the latter section does no more than enumerate certain incorporeal, inchoate, or contingent rights which cannot be transferred by an act of conveyance from one person to another. The other rights enumerated in Section 6 show that this is so. The section is not one imposing a statutory prohibition against the formation of contracts relating to certain specified subjects, as though, for example, they were contrary to public policy, and therefore forbidden. It merely enacts that a transfer or act of conveyance purporting to pass is ineffectual to pass any interest in these particular rights. The result is that they cannot be assigned either at law, or, to adopt the phraseology of English lawyers, at equity, by an act of transfer. And it follows that an imperfect act of transfer, or an act purporting to transfer rights mentioned in the section, confers no equitable interest upon the transferee such as was recognized by the English Court of Equity. But this does not mean, and in my judgment could never have been intended to mean, that an arrangement or contract supported by good consideration and otherwise binding in equity upon the parties thereto, will not be held binding in equity upon the parties to it merely because one of the results of it is to put one of the parties in the same position as if he had taken a

transfer from the person entitled to an inheritance if a transfer could be actually effected.

5. Suppose, for example, one of two brothers, either of whom may in certain contingencies become entitled to inherit the share of a third, being minded to leave the country and settle in another part of the world, with invested funds, agrees with the other in consideration of a lakh of rupees, which is duly paid to him, not to claim the share of the third brother if eventually it should fall in to him, but to leave the other brother to establish his own right if he can. Such a contract would according to English law, be a good equitable defence, or plea, and an absolute answer to any claim to such inheritance made by the one brother against the other. It seems to me that the courts in India are bound to apply the rules of equity and good conscience to such an agreement, unless it be against public policy or otherwise expressly forbidden, and that the fact that the formalities of the law of transfer do not allow such an arrangement to be effected by an assignment either in the nature of an act of conveyance or of an equitable assignment, is not sufficient to justify a negation of the obvious equity of the case. The transaction is not aimed at by the Transfer of Property Act; only the act of conveyance by an express transfer.

6. Apart, however, from these considerations, the trend of authority in India appears to me to have been in the direction of supporting these transactions by the application of the rule of equity and good conscience to binding contracts or family arrangements which have been wholly performed on one side. In any case, I agree with my brother Piggott, who points out in the judgment he is about to deliver that there is abundant authority in this Court to support this defence and that the learned District Judge was bound to follow those decisions. I refer particularly to the expressions used by their Lordships of the Privy Council in *Rani Mewa Kumar v. Rani Hulas Kuwar* (1874) L.R., 1 I.A., 157, and to the recent decisions of this Court in *Kanti Chandra Mukerji v. Ali-Nabi* (1911) I.L.R., 33 All., 414; *Nasir-ul-Haq v. Faiyaz-ul-Rahman* (1911) I.L.R., 33 All, 457; *Mohammad Hashmat Ali v. Kanis Fatima* (1915) 13 A.L.J., 110; *Barati Lal v. Salik Ram* (1915) I.L.R., 38 All., 107.

7. The case of Olati Pulliah Chetti v. Varadarajulu Chetti (1908) I.L.R., 31 Mad., 474, where an alleged reversioner admitted the widow's absolute Interest, without expressly relinquishing anything, is a case much in point. It was there held that a compromise cannot be impeached by one of the parties to it on the sole ground that the party whose right is admitted by the compromise had in fact no such right; that a compromise for valuable consideration cannot be repudiated unless it is shown to be illegal or void; and that an admission does not affect a transfer or fall within Section 6(a) of the Transfer of Property Act as a transfer of a mere spes successionis. As was said in an old English case, Underwood v. Lord Gourtown (1801) 2 Sch, and L J, 41, "It only amounts to this. I give you so much for not seeking to disturb me."

8. I entirely agree with the view taken in the Madras case, and it seems to me that, whether or not the case of Sums-ud-din Goolam Husein v. Abdul Husein Kalim-ud-din (1906) I.L.R., 31 Bom., 163 was rightly decided, the dictum of the Chief Justice cited in the head note as to Section 6(a) not perpetuating in India the distinction between what are known in England as assignments at law, and assignments in equity, is in the nature of a trap, and has led to much misconception. An arrangement of the kind relied upon by the defendant in this case is set up as an equitable defence; it does not purport to be a transfer, or equitable assignment.

Piggott, J.

9. The learned District Judge has found that the agreement of the 3rd of June, 1897, "if legal, is binding on the plaintiff." He quotes authority of the Bombay High Court Sums-ud-din Goolam Husein v. Abdul Husein Kalim-ud-din (1903) I.L.R., 31 Bom., 165 in support of his finding that the agreement in question amounts in effect to the transfer of the chance of succession to an estate, and cannot be enforced against the plaintiff so as to prevent him from claiming property which has devolved upon him under the ordinary Hindu law of inheritance. I have myself referred to a case in which the same view was taken, on a state of facts much stronger against the plaintiff than those now before us, by the late Chief Justice of the Patna High Court when Judicial Commissioner of Oudh--Bajrnag Singh v. Bhagwan Baksh Singh (1908) 11 Oudh Cases, 301. If the matter were res integra

in this Court I should have preferred to follow that decision, adopting the reasoning of Sir EDWARD CHAMIER. There is, however, clear authority of this Court, the other way, which the lower appellate court was bound to follow. I cannot take this case out of the operation of the principle enunciated by the learned Judges who decided the case of Mohammad Hashmat Ali v. Kaniz Fatima (1915) 13 A.L.J., 110. It is true this decision has not been reproduced in the authorized reports; but it has been founded upon and approved in Barati Lal v. Salik Ram (1915) I.L.R., 38, All., 107. So long as this Court continues to refer to unauthorized reports, it practically lays upon courts subordinate to it the burden of doing the same. I may say that I should myself have concurred in the decision in Mohammad Hashmat Ali v. Kaniz Fatima (1915) 13 A.L.J., 110 on the ground that in that case all defects of title were covered by the decree of a competent court binding on the parties, but the case was not decided on this ground. The learned Judges distinctly held that it is competent for a person to contract not to claim an inheritance, in the event of his becoming entitled to it on the death of a living person. There are older authorities of this Court pointing in the same direction to be found in the eighth volume of the Allahabad Law Journal Reports. I think the court below was bound to follow the authority of this Court, and I therefore concur in setting aside the decree of the lower appellate court and restoring that of the court of first instance. The appellant must get his costs throughout.

10. The order of the Court is that the decree of the lower appellate court be set aside, and the decree of the first court restored, The appellant must get all the costs.

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