Privy Council Appeal No. 87 of 1913.

Sri Rajah Malraju Lakshmi Venkayyamma Rao Bahadur - - - - - - - - *Appellants*

v.

Sri Rajah Venkata Narasimha Appa Rao Bahadur, since deceased, and Another - *Respondents*

Sri Rajah Parthasaradhi Appa Rao Bahadur - *Appellant*

v.

Sri Rajah Malraju Lakshmi Venkayyamma Rao Bahadur - - - - - - - - *Respondent*

Consolidated Appeals

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 15TH MAY, 1916.

Present at the Hearing:

LORD SHAW.
LORD SUMNER.
SIR JOHN EDGE.
MR. AMEER ALI.
SIR LAWRENCE JENKINS.

[*Delivered by* LORD SHAW.]

These are consolidated appeals against a judgment and decree, dated the 26th November, 1909, pronounced by the Chief Justice and two Judges of the High Court of Judicature at Madras in an appeal under Letters Patent against a decree of the High Court dated the 16th November, 1908. The two Judges constituting the High Court differed in opinion, with the result that a decree pronounced by the District Judge of Godaveri, dated the 3rd November, 1904, had been affirmed in the original appeal. The Letters Patent appeal was allowed and the suit was dismissed. The form which the dismissal took will be afterwards referred to.

The suit was brought with the main object described in the first prayer of the plaint,—to the effect that it be declared

that the plaintiff is entitled to the village of Repudi, and that defendants do put the plaintiff in possession of the same.

Rajah Narayya, who died in 1864, was the owner of an extensive zemindary of Nidadavole. He was survived by two widows, both of whom were childless. One of these widows died in 1881; the other, a lady named Papamma, became sole life owner and continued to enjoy the estate until December 1899, when she died.

She resided in her palace, or fort, at Senivarpet, having a large income amounting to about 6 lakhs of rupees per annum. The appellant, who is plaintiff in the suit, was a grandniece of Papamma, and was brought up by her from an early age. In 1886, at the age of 14, she was married to the ex-zemindar of Narasaropet. He was a man of good standing, in the enjoyment of a small pension from the Government, and himself the owner of property of considerable value.

There can be little doubt that the Rani, herself childless, was on terms of attachment and affection towards the plaintiff and valued her companionship. When the marriage was arranged, the Rani disbursed all the suitable expenses thereof; but she appears to have been extremely anxious that her grandniece, although married, should continue to live with her. This, however, would without doubt have involved a certain loss of dignity and position on the part of her husband: and it appears clear from the facts proved that the obtaining of his consent to any arrangement of the kind was obtained with difficulty. The Rani agreed to make presents of jewellery to her grandniece, and to make provision for her apparently on a fairly ample scale by the purchase of immovable property for her. Upon this footing an arrangement was made and matters were settled. The date of that settlement was 1886, namely, the year of the plaintiff's marriage.

The arrangement was indefinite; and the indefiniteness was the cause of considerable uneasiness. Following upon it, however, the plaintiff and her husband did reside with the Rani until 1893. During this interval of time two properties were purchased by the Rani. The form in which she carried out her promise towards her grandniece was that in each instance she took the property in the first place in her own name, and after a period of about two years she granted a conveyance thereof to her grandniece. These properties were small. The balance of evidence is that they would not have been held by any of the parties as sufficient consideration for the plaintiff and her husband continuing to reside as stated. The Rani herself appeared, as circumstances afterwards showed, to be anxious to make further and more substantial provision for her grandniece. This was the situation of affairs up till the spring of the year 1893.

At that time the Rani purchased the property known as Repudi. She made no concealment of having done so for the plaintiff; but she did raise objection to the title of Repudi being taken directly in the plaintiff's name. The impression of her

Dewan had been that the transaction was to be direct; and on the 28th February, 1893, a receipt was given to him for an advance paid in respect of the purchase which bore that "having settled to sell to you for 40,000 rupees the village" . . . . . "in order that you may give away the same to M. R. Ry. Rajah Malraju Lakshmi Venkayyamma Rao Garu for dowry," . . . . . "we have this day received from out of your own separate property 100 rupees as advance towards the said sale amount." This appeared to be much too direct for the Rani, and she wrote to the Dewan on the 8th March: "I have told you that this village should be purchased and the document obtained, for the present, in my name alone, as was done before." She mentioned her desire that the document "should be got written" as on the previous occasion, and she added "it is not my intention to have this village conveyed to anyone's name for the present, and so I have written this." In their Lordships' opinion the Rani desired to follow her own previous practice of taking the title in her own name, and as was done with the two other villages, thereafter to give a conveyance from herself. She uses the expressions "for the present," and "as was done for the former villages." The title was accordingly taken in her own name.

This, however, brought matters to a head with regard to the position of the plaintiff and her husband, and to their continuing to reside with the Rani. The plaintiff's husband left; he betook himself to his own property, and he received various communications which asked him to return, and contained assurances that the arrangement upon which Repudi was bought, namely, that it should be truly for the plaintiff, should be carried out. Their Lordships do not state these arrangements in detail. They are, however, fully satisfied on the evidence that the Dewan and the plaintiff's uncle were authorised to communicate to the plaintiff's husband this assurance and promise, and that in pursuance of that authority they visited him and made the communication.

The negotiations were protracted, but they culminated in a letter of date 12th October, 1893, written by Papamma in her own hand to the plaintiff herself, in which she stated: "Repudi was purchased for you alone. Some encumbrances thereon have yet to be discharged. I shall discharge the debt, retain it under me so long as I am alive, and afterwards convey it to you yourself. From that forwards you may do with it as you please. The whole world knows that I purchased it (only) to give it away to you. Do not think, even in your dream, that I, who brought you up from infancy, would ruin you. I wrote to the grandson (she designated the plaintiff's husband thus) in that manner, thinking that there was need to tell him all these matters and nothing else."

This letter appears to their Lordships to be a promise, and to be quite definite (1) with regard to its subject-matter, namely, the village of Repudi; (2) with regard to the ownership thereof, namely, that that was to be in the plaintiff; and (3) with regard

to the date of her entry into possession thereof, namely, that possession would be given immediately upon the expiry of the life interest therein, which Papamma reserved to herself.

In their Lordships' opinion this promise was accepted. The evidence taken as a whole and the actings of parties are in entire conformity with this being so. Their Lordships believe the plaintiff's testimony to the following effect: "In the said letter she wrote to say that she would pay off the debts, keep the village under her throughout her lifetime and then give it to me. I agreed to it. I informed my husband of this. He too consented to it. Being unable to bear the separation, she desired me to stay with her. She promised to give me, as aforesaid, for staying with her accordingly till her death. The arrangement was that both myself and my husband should remain there. I consented to it accordingly. My husband also consented to it. Had Papamma Rao Garu failed to enter into such an agreement in regard to Repudi, myself and my husband would not have stayed there."

The Board is of the opinion accordingly that there was here a completed contract. Papamma accomplished her desire, and she obtained the consideration which she had so much at heart. Acceptance of her terms and compliance with her stipulation were made. The words of Lord St. Leonards in *Maunsell* v. *Hedges* (4 H.L. Cas. 1039) might be asked here: "Was it not a proposal, with a condition, which, being accepted, was equivalent to a contract?" Their Lordships do not doubt that it was.

From that date forward, for a period of about seven years, namely, until Papamma's death in 1899, the plaintiff and her husband continued to live with her in her palace. There is a mass of oral and documentary evidence, but it does not advance, nor does it in their Lordships' opinion recede from, the point of completed contract as above set forth.

This being so, the citation of that set of cases of which *Maddison* v. *Alderson* (8 App. Cas. 467) and *Maunsell* v. *Hedges* are the familiar examples is beside the mark. In both of these cases, as must be done in all cases of a similar character, the true issue must be disentangled from statements or representations *simpliciter*, or from mere announcements of intention; and that true issue is: is a contract proved? Had a contract been proved in either of the examples cited, there is nothing to suggest that the law would have refused to give effect to it by way of specific performance.

Maddison v. *Alderson* is a good instance of the point. The contract was alleged to be constituted by a promise followed by actings on the faith thereof. The actings were carefully scrutinised in order to see whether the contract, the sole evidence of which otherwise was in the testimony of the plaintiff herself, was established. Lord O'Hagan put the matter thus: "Assuming that the action be considered maintainable, if at all, for the purpose of forming a parole contract partly

performed, the course of the argument appears to me to have been further erroneous in this, that instead of seeking to establish primarily such a performance as must necessarily imply the existence of the contract, and then proceeding to ascertain its terms, it reversed the order of the contention. The Court was asked from the findings of the jury and the testimony supporting them to say there was a contract, and then to discover in the conduct of the parties acts of performance sufficient to validate the bargain so previously ascertained." And Lord Blackburn put the matter broadly thus: "It seems to me that in this case the evidence is evidence from which a contract would not have been found by a jury if it had been explained to them that to make a contract there must be a bargain between two parties."

In the case of *Maunsell* v. *Hedges* a bill was filed for the purpose of compelling those claiming under a certain will to settle certain real estates in Tipperary on the appellant pursuant to an alleged obligation arising out of certain letters. The letters disclosed that the deceased had positively declined to be bound. "I shall never settle," said he, "any part of my property out of my power so long as I exist." It was held that there was no contract placing the testator under such obligation.

In short, to use the language of Lord Cranworth in *Jordan* v. *Money*, 5 House of Lords Cases 217 (a case in which the process of disentangling the true from the erroneous issues, as above alluded to, was carefully followed), "The question upon this part of the case is simply one of fact. Is it made out by such evidence as can justify a court of justice in acting upon it that such a contract as that which is alleged really was entered into?" The Board is of opinion in the present case that this question should be affirmatively answered.

It was strongly pressed upon their Lordships that the letter did not contain sufficient evidence of anything but an intention, and that it stopped short of any actual promise upon which acceptance of it as such might follow. Their Lordships do not think so. The law of India does not require writing at all in regard to such a bargain; but their Lordships are not surprised, looking to the frequent challenges made of contracts resting upon word of mouth alone, that the desire should have been expressed to have Papamma's undertaking in writing and distinctly set down. In their Lordships' opinion they were so obtained, and a contract was concluded in October 1893.

Another view of the case would lead precisely to the same result. It is this: Suppose the proof of the acceptance made by the Rani, that is to say, of an acceptance in terms, were considered to be defective, what is the situation of the parties in view of the actings of the plaintiff and her husband? Their Lordships are of opinion, looking to the demand for a definite proposal as a condition of the plaintiff and her husband staying

on with the Rani, that their actings did take place upon the footing of the proposal so made and that they were known by Papamma to have taken and to be taking place on that footing. In these circumstances the objection that the contract itself was inchoate or incomplete cannot be maintained. The law in this sense was fully explained by Lord Selborne in the case of *Maddison* v. *Alderson*, a judgment which was cited at some length by this Board in *Mahomed Musa* v. *Aghore Kumar Ganguli* (42 *I.A.*, *p.* 1.). After such actings *locus penitentiæ*, or the power of resiling from an incomplete engagement or an unaccepted offer is, to use language borrowed from the law of Scotland and highly approved in the case referred to, barred by "*rei interventus*, which raises a personal exception which excludes the plea of *locus penitentiæ*." As was stated in the judgment of the Board in Mahomed Musa's case, "Their Lordships do not think that there is anything either in the law of India or of England inconsistent with it, but upon the contrary, that these laws follow the same rule."

As stated, accordingly, the same result is reached. And it would not be open for those representing the Rani or her estate to resile from or fail to perform the obligation to deliver possession of the village of Repudi to the plaintiff, such possession to take effect as from the date of the Rani's death.

The question of Papamma's intention is, of course, of fundamental importance, and it was much pressed upon the Board that she never meant to be bound. Their Lordships do not agree. They do not think that Papamma meant to avoid a bargain, or ever meant to have her grandniece and husband live on with her under the impression, on their part, that they were bound, whereas all the time she, Papamma, knew she was, and intended to be, free. Their Lordships do not think that the Rani's design included duplicity of this character.

The transactions of October 1893, followed by the years of compliance, on the footing that those transactions formed a concluded contract, leave no substantial doubt that no repudiation by the Rani would have affected it. Fortunately, however, there is a body of evidence throwing light upon the Rani's own view.

Her death occurred on the 5th December, 1899. On her death-bed she declared that she had purchased Repudi village solely on account of the plaintiff. Their Lordships believe the plaintiff's statement that the Rani then said "that she had purchased the Repudi village on my account alone, that I should take it after her death." The Dewan's evidence is quite plain upon the subject. He made a statement on the 5th December before the Tahsildar as to his instructions by the Rani, in which he said "she has given me directions saying, among other things, that the village of Repudi had been given away to her granddaughter, and that the same should be delivered into possession of her after her death."

In the opinion of the Board accordingly, instead of there being any such repudiation of the contract, there was a dying declaration by the Rani, which, in their Lordships' opinion, constituted a reaffirmation and confirmation thereof.

Their Lordships observe that much discussion and considerable difference of judicial opinion arose, in the courts below, upon the question whether these statements made on death-bed by the Rani did not constitute a nuncupative will. Such a will is valid in India. Some of the Judges, including the trial Judge, thought that it did; others thought it did not. The argument presented at this Board is noticeable in this particular: It was to the following effect: "Granted that the words taken by themselves might have made a will, it really could not have been so because the lady used language, the true effect of which was a declaration that the property of Repudi was already the plaintiffs'. She thought that it was, and therefore did not make a will with regard to it." If this argument be sound, that there was no will for the reason given, then the reason given is very helpful evidence that the Rani had already and effectually given a right to Repudi to the plaintiff, under which, immediately she, the Rani, died, the plaintiff would enter into possession of the village.

As stated, their Lordships are of opinion that the plaintiff has such a right in terms of a contract accepted and complete, and that a will accordingly would not have been in place in the circumstances, and should not be affirmed by law. Upon the other hand, the declaration on death-bed by the Rani herself leaves no doubt that what had been done had been effectively done. Her belief and statement to that effect were entirely well-founded.

With regard to the shape of their Lordships' decree, it is to be noted that, consequent upon litigation with regard to this and other property, a receiver was appointed. This circumstance saves any complexity from arising in the carrying out of the present judgment. The receiver will act upon it. He will deliver possession of Repudi upon the terms of the contract now affirmed, that is to say, the plaintiff will be entitled to the village as from and after the Rani's death.

The judgment now given disposes of any necessity for a pronouncement upon the cross-appeal.

Their Lordships will humbly advise His Majesty that the appeal be allowed with costs, and that the cross-appeal be dismissed also with costs.

In the Privy Council.

SRI RAJAH MALRAJU LAKSHMI VENKAYYAMMA RAO BAHADUR

v.

SRI RAJAH VENKATA NARASIMHA APPA RAO BAHADUR, and ANOTHER.

SRI RAJAH PARTHASARADHI APPA RAO BAHADUR

v.

SRI RAJAH MALRAJU LAKSHMI VENKAYYAMMA RAO BAHADUR.

DELIVERED BY LORD SHAW.

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