

(1877) 07 PRI CK 0003

Privy Council

Case No: None

The
Administrator-General
of Bengal

APPELLANT

Vs

Juggeswar Roy and
others

RESPONDENT

Date of Decision: July 12, 1877

Citation: (1878) 3 ILRPC 193

Hon'ble Judges: J. W. Colvile, B. Peacock, M. E. Smith, R. P. Collier, JJ.

Judgement

M.E. Smith, J.

1. This suit was instituted by Mr. Robert John Jackson, who upon his death has been succeeded on the record by the present plaintiff, for the purpose of setting aside certain conveyances by him to the three first defendants of his interest in Mouzah Luchhipore, in the district of Ranigunge, on the ground, in the first place, that he was under age, and in the second place, that he was induced by the defendants, who were trusted servants, but who had abused their fiduciary character to part with his property without fully understanding the nature of the transaction, and without adequate consideration. Mr. Robert John Jackson was the adopted son of a Mr. Robert Gwynne Jackson (who will be called Mr. Gwynne Jackson), who appears to have been of European extraction. The date of his adoption is one of the questions in the cause, the plaintiff alleging the adoption to have been about the year 1855, and the defendants, as far back as 1850. Mr. Gwynne Jackson appears to have resided a great number of years in the neighbourhood, and to have been well acquainted with coal mining. He in 1860 was the manager of the coal mines of Messrs. Apar and Company, who, it may be observed by the way, entered into an agreement with Jackson the plaintiff to supply him with funds for prosecuting this suit, in consideration of, in the event of his succeeding, his granting them a coal lease.

2. Mr. Gwynne Jackson left the employment of Messrs. Apar and Company in 1860 on account of their being dissatisfied with him, but he continued afterwards up to about 1867 to some extent in their employment in a subordinate capacity, when he finally left it. He appears to have acquired some property, and to have been interested in other coal mines in the neighbourhood.

3. Shortly before the year 1860, which is the first date material in this case, Mr. Gwynne Jackson bought certain patni and darpatni rights, including the coals in Mouzah Luchhipore, partly from the defendants. It is not disputed that by a deed bearing date the 20th September, 1860, he, being such patnidar and darpatnidar, granted certain sub-tenures by way of darpatni and sepatni, reserving the minerals, to three of the defendants; but one question in the cause has been, whether that deed was executed at the time it bears date, or at a later date, not very clearly indicated on the part of the plaintiff, but which the Judge in the Court below has found to be the year 1869.

4. Gwynne Jackson made a will in 1858, leaving all his property to his son. Subsequently, in 1863, he executed a hibba, which would have the effect of revoking that will, giving all his property, some of which had been acquired since the date of the will, to his son, and in fact denuding himself of all his property, if that hibba is to be taken as intended by him to be then operative.

5. The deeds, the subject of this suit, were executed in 1870 and 1871, and the last in 1872. These deeds may be divided into two classes. One class is that in which the plaintiff confirms the darpatni and sepatni rights, which were dealt with by the deed bearing date the 20th September, 1860; the other class of deeds, which bear date in 1871, and one of them as late as June, 1872, are deeds of sale, whereby he transfers all the superior interest which he had, together with the minerals which had been reserved in the former deeds.

6. With respect to one of the main questions in this case, which has been already indicated, namely, whether the conveyance bearing date the 20th day of September, 1860, was executed then or at a subsequent date, their Lordships have intimated, in the course of the argument, that, on the whole, they concur with the finding of the High Court that that deed must betaken to have been executed at the time when it bears date. If that be so, being prior in time to the hibba, it is unaffected by that instrument, and the subsequent deed of 1870, being merely confirmatory of it, and conferring on the defendants no greater interest than they took under it, is obviously of no importance, and may be allowed to stand with it.

7. The question remains whether the deeds of 1871 and 1872, conveying, as has been before stated, the remaining and superior interest, together with coals, are to be set aside on any of the grounds which have been alleged. With respect to this point their Lordships also intimated, during the course of the argument, that they saw no sufficient reason to differ from the conclusion of the High Court that the

plaintiff had failed to sustain the burden of proof which lay upon him that he was a minor at the time of the execution of these deeds.

8. The question then arises, in the first place, whether it has been shown that the three first defendants (for it should be stated that the two last defendants are the sub-lessees under them) were in a fiduciary capacity or character to the plaintiff at the time of the execution of these deeds, and were therefore in a position to exercise undue influence over him. Upon this question their Lordships also have come to the same conclusion as the High Court. There is indeed some evidence that Haradhun Misser, the father of Juggeswar Misser, and the two Roy defendants, were at times employed in collieries in which Gwynne Jackson had a share; and there is also some evidence of the latter having acted as his gomashas with respect to the property comprised in the deed of 1860, but the decision which their Lordships have come to, concurring with the High Court, on the subject of this deed, in a great measure disposes of this class of evidence. Their Lordships see no reliable evidence on the record that at the time of the execution of these documents by the plaintiff they were in any fiduciary character towards him, or in a position unduly to influence his judgment. If that be so, the question is narrowed to whether a fraud was practised upon him.

9. It is contended, in the first place, that the nature of the transaction was misrepresented to him; that the defendants represented to him that he was not parting with his mining rights by these deeds, whereas he was, and that the deeds were not explained to him; further, that the sale price was inadequate.

10. With respect to the deception so alleged to have been practised upon him, the only evidence to be found of it is the evidence of the plaintiff himself, and that evidence is described as untrustworthy by the learned Judge of the inferior Court, who found in the plaintiff's favour. There is no confirmatory evidence of this, and there is contradictory evidence to the effect that the deed was read over and explained to him, and that he understood the language in which it was written.

11. The question then reduces itself to whether there was such an inadequacy of price as to be a sufficient ground of itself to set aside the deed. And upon that subject it may be as well to read a passage from the case of *Tennant v. Tennants* L.R. 2 Scot. Ap. 6 in which Lord Westbury very shortly and clearly stated the law upon this subject. He says : "The transaction having been clearly a real one, it is impugned by the appellant on the ground that he parted with valuable property for a most inadequate consideration. My Lords, it is true that there is an equity which may be founded upon gross inadequacy of consideration, but it can only be where the inadequacy is such as to involve the conclusion that the party either did not understand what he was about, or was the victim of some imposition."

12. Their Lordships are unable to come to the conclusion that the evidence of inadequacy of price is such as to lead them to the conclusion that the plaintiff did

not know what he was about, or was the victim of some imposition. It should be borne in mind that his father, Mr. Gwynne Jackson, was at hand, and their Lordships concur with the view of the High Court, that Mr. Gwynne Jackson, by the hibba of 1863, did not intend to denude himself of all his property in favour of his son, whom he represents at that time to have been eight years old, and who could not have been more than twelve or thirteen. It probably was a device for the purpose of defeating existing or possibly future creditors. Gwynne Jackson himself acted in contravention of that deed, for he sold a property soon after its date without any reference to it, and there is evidence that he continued to act as if he were the owner of the property. Gwynne Jackson was very conversant with coal mining and the character of property in the district, and their Lordships are not satisfied that he was unable to manage his own affairs or to give competent advice to his son until the year 1872, in the early part of which he was admitted to an hospital with an incurable disease of which he died in about the middle of that year. He had granted his property to his son by a hibba, intending, nevertheless, to keep in his hands the control of it through his life, but very probably intending it to operate after his death in favour of his son. His son, no doubt, had an interest in the property as well as himself, and probably the true view of these transactions in 1870 and 1871 is that they were in substance joint transactions by the father and the son. Their Lordships cannot therefore regard the son at these dates as altogether in the position of a minor without any one to advise him. It may be observed that the deed in 1872 was but the completion of the previous transactions.

13. Independently, however, of this consideration, it cannot, their Lordships think, be said that the purchase-money was so grossly inadequate that its inadequacy amounts to proof of an imposition upon the plaintiff. It is true that there is some evidence, the value of which it is difficult precisely to estimate, that property with coal sold in the neighbourhood for some years" purchase greater than the number of years" purchase for which this property sold, which was with respect to a portion of it twelve years" purchase, and with respect to another portion of it ten years" purchase; and there is evidence, which perhaps is the strongest on this part of the case, that soon after the purchase by the defendants they let a portion of this property on mining leases at a considerable rental, or more properly speaking royalty. It should be observed, however, that these leases give the power to the lessee to terminate them at any time, and non constat how long the high rental would continue.

14. It has been suggested that the defendants must have known that there was coal under the land, and that they concealed their knowledge from the plaintiff. Even if it were so, putting aside their fiduciary character, and in the absence of any proof of fraud, that would not be enough to vitiate the transaction; but in point of fact their Lordships can find no evidence of this. All the evidence is the other way, namely, that they did not discover the coal until after they had made the purchase; and it may be observed that Gwynne Jackson himself had tried for coal without being able

to discover it. It appears, therefore, to their Lordships that this last ground on which it is sought to impeach the validity of the deeds also fails.

15. On the whole, therefore, their Lordships are of opinion that the High Court was right in affirming the validity of these deeds and dismissing the plaintiff's suit; and they will, therefore, humbly advise Her Majesty that the judgment of the High Court be affirmed, and this appeal dismissed with costs.