(1939) 41 BOMLR 659

Bombay High Court

Case No: None

Rana Uma Nath Bakhsh Singh		APPELLANT
	Vs	
Jang Bahadur		RESPONDENT

Date of Decision: July 8, 1938

Citation: (1939) 41 BOMLR 659

Hon'ble Judges: Shadi Lal, J; Romer, J; George Rankin, J

Bench: Full Bench

Final Decision: Dismissed

Judgement

George Rankin, J.

1.

Rana Sir Shanker Bakhsh Singh

(born in 1840, died in 1897)

Lal Chandra Bhukhan Singh RanaSir Sheoraj Singh

(died on August 7, 1894) (died on, April 14, 1920)

Rana Uma Nath Bakhsh Singh Kunwar Shambhu Nath Bakhsh

(appellant) Singh

2. Rana Sir Shanker Bakhsh Singh was taluqdar of Khajurgaon. In 1890, he had made a will appointing his eldest son Lal Chandra as his

successor, but Lal Chandra having died in 1894 a new disposition was made by Sir Shanker Bakhsh Singh by a codicil dated November 1, 1894.

By this codicil he gave to Sheoraj, his younger son, all his property moveable and im-moveable, including the Khajurgaon estate, but purported to

provide that Sheoraj should not have power to make any son except Uma Nath Singh, his eldest son, the owner and successor to the estate

during his presence"". It is unnecessary to discuss the effect in law of this provision. Sir Shanker Bakhsh Singh having died in 1897 was succeeded

by Sheoraj who became Sir Sheoraj Singh, K.C.LE. On May 9, 1913, two instruments1 were executed. The first was a deed of relinquishment

(dastbardari) to which the parties were Sheoraj, Uma Nath (the defendant-appellant) and Shambhu Nath, his brother. By this deed Sheoraj

relinquished all his rights and property to the defendant-appellant and purported to put him in possession forthwith. The deed provides that the

defendant-appellant should pay the debts of Sheoraj and should be entitled to receive and collect all debts due to him. By its sixth clause it referred

to the contemporaneous instrument-

(6) That I, the declarant No. 2 (Uma Nath), do hereby agree that I shall continue to act according to the conditions laid down in the deed executed

to-day by me in favour of the declarant1 No. 1 (Sheoraj).

3. The second instrument, described as an ikrarnama or agreement, was executed by Uma Nath alone. It recites that Sheoraj, his father, had

appointed him successor and put him in possession ; it provides that a certain village should be set aside for the maintenance of Sheoraj who was

to get in addition a sum of Rs. 7,045 in cash and a further sum after all his debts had been satisfied. Uma Nath by this deed also promised to pay

Rs. 3,000 annually to the wife of Sheoraj and a sum of Rs. 2,000 annually to Musammat Sarwar, a concubine who lived at Khajurgaon and who

had two sons by Sheoraj-viz. the plaintiff Jang Bahadur and Bam Bahadur. Clause (4) of the ikrarnama is as follows:

(4) That I, the executant, shall pay Rs, 50,000, as specified below, in cash, to Jang Bahadur and Bam Bahadur, minor sons of the aforesaid

prostitute, Musammat Sarwar, on their attaining majority provided they remain obedient:- Jang Bahadur Rs. 30,000, Bam Bahadur Rs. 20,000.

After their attaining age of majority, I shall put Jang Bahadur in possession of village Mathiapur, pargana Dalmau and Bam Bahadur in" possession

of village Udwamao pargana Sareni with the right of inheritance but without the power of making transfer. The aforesaid persons and their heirs

shall continue to pay from the date of their possession, land revenue, cesses and subscriptions of the British Indian Association and Canning

College, along with the additional amount of Rs. 10 per cent., by way of proprietary right, on the land revenue, to me, the executant,, and my heirs.

Except receiving the aforesaid amount in cash and remaining in possession of the villages, mentioned above, the aforesaid persons shall not be

entitled to get any Guzara or allowance from the estate. If for any reason I may not be able to deliver possession of village Mathiapur to Jang

Bahadur then I shall put him in possession of another village, having the same amount of profits and being of the similar quality, according to the

above mentioned condition.

4. These deeds were immediately followed by mutation proceedings whereby the name of Uma Nath was substituted for that of Sheoraj in the

revenue papers. On April 14, 1920, Sheoraj died. At some time-apparently between 1924 and 1927-Musammat Sarwar and her sons left

Khajurgaon and went off to live with her own people in another village. The plaintiff-respondent Jang Bahadur and his young brother Bam Bahadur

were both minors at this time, but Jang Bahadur attained his majority on May 2, 1930.

5. On September 7, 1931, Jang Bahadur brought the suit out of which the present appeal arises against the appellant Uma Nath claiming the sum

of Rs. 30,000 under Clause (4) of the deed of May 9, 1913, and also possession of the village Mathiapur or another village of like value according

to the terms of the deed. A great many issues were framed by the learned Subordinate Judge and discussed at the trial, but in the end the learned

Judge came to the conclusion that the plaintiff was not entitled to any decree for possession of the village or for a declaration of any title thereto.

He also found that the plaintiff was not entitled to a decree for Rs. 30,000 claimed because he had not fulfilled the condition of ita"at-that is, the

condition as to obedience mentioned in Clause (4) above recited. On appeal to the Chief Court of Oudh, Nanavutty and Zia-ul-Hasan JJ. allowed

the appeal and gave the plaintiff a decree for possession of the village of Mathiapur and for Rs. 30,000 against the defendant with certain interest,

mesne profits and costs. From this decree the defendant has appealed to His Majesty.

6. Having regard to the fact that the plaintiff Jang Bahadur was not a party to either of the two instruments of May 9, 1913, the first question which

arises is whether or not Clause (4) above recited of the instrument which was executed by the appellant alone amounts to a trust in Jang Bahadur"s

favour so as to entitle him to claim to have the trust performed. It is reasonably plain, as the Courts in India have held, that the two instruments

must be read together, and that the obligations undertaken by the appellant are the terms upon which his father was surrendering to him immediate

possession of all his property. Moreover the provision for Jang Bahadur of a village and of Rs. 30,000 is intended to come out of the property

which was being surrendered. In these circumstances a number of decisions by this Board have made it difficult for learned Counsel for the

appellant to contest the proposition that the instruments created a trust in favour of Jang Bahadur. Nawab Umjad Ally Khan v. Mussumat

Mohumdee Begum (1867) 11 M.I.A. 517, (1892) L.R. 20 I.A. 9 (Privy Council) , (1910) L.R. 37 I.A. 152 (Privy Council) , 23 CWN 549

(Privy Council) , Khajeh Solehman Quadir v. Nawab Sir Salimullah Bahadur, 24 Bom. L.R. 1257 . Their Lordships are in agreement with the

learned Judges of the Chief Court in holding that the effect of Clause (4) above cited was to: create a trust in favour of the plaintiff enforceable at

his instance.

7. This leaves as the only defence remaining to the appellant the condition expressed in the clause by words which, as they appear in the translation

before their Lordships, are, ""provided they remain obedient"". The learned Subordinate Judge was of opinion that the word ""ita''at"" generally implies

submissive obedience, which he explains as ""such solicitous and affectionate attendance and dutifulness, as one would expect from a very near and

dear relation"". The learned Subordinate Judge concluded that the plaintiff must fail as regards the sum of Rs. 30,000 because he had given no

evidence to prove the performance of ita''at, and because he had not cross-examined the defendant whose complaint took the form that the

plaintiff had never offered any nazar at the time of Holi or Dasehra, or other festival, nor visited the defendant even when the defendant was ill. The

learned Judges of the Chief Court read the condition in the clause as meaning that the plaintiff and his brother would be entitled to the money on

condition of their remaining loyal to the defendant and considered that there was nothing to show that the plaintiff had committed any act of

disloyalty. Their Lordships are unable to hold that the complaints made by the defendant of the plaintiff''s conduct: towards him can be regarded as

establishing a breach of the condition ""provided they remain obedient"". The evidence of the plaintiff''s mother and her brother to the effect that

some four or six years after the death of Sheoraj she and her two boys were turned out by the defendant has an important bearing, as the Chief

Court rightly thought, upon this question. It seems reasonably clear that the position of the woman and her sons at Khajurgaon was a very difficult

one and the fact of her being a Mahomedan created further difficulties ; not unnaturally her sons become Muslims.

8. This change of religion would not excuse them from fulfilling the condition as to obedience, but the circumstances taken as a whole throw doubt

upon the reality of the defendant''s complaint. It seems doubtful if the plaintiffs attendance at ceremonies would have been welcomed, and in any

case there is no trace of any request having been made by the defendant to the plaintiff of of any intimation that the defendant desired his company

or his attendance. The mere complaint, therefore, that the plaintiff did not come from the place where his mother was living and pay certain

compliments to the defendant on the occasion of certain Hindu festivals is singularly unimpressive, and whether the word ita''at be translated

obedience"" or ""loyalty"", their Lordships are satisfied that this condition affords no defence to the appellant in this case.

9. Their Lordships are of the opinion that this appeal fails and should be dismissed. They will humbly advise His Majesty accordingly. The

appellant must pay the costs of the respondent.