

Privy Council Appeal No. 75 of 1916.

Allahabad Appeal No. 20 of 1914.

Mary Lilian Hira Devi - - - - *Appellant,*

v.

Kunwar Digbijai Singh - - - - *Respondent,*

FROM

**THE HIGH COURT OF JUDICATURE FOR THE NORTH-WESTERN
PROVINCES, ALLAHABAD.**

**JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 21ST MAY, 1917.**

Present at the Hearing:

VISCOUNT HALDANE.

LORD ATKINSON.

SIR JOHN EDGE.

MR. AMEER ALL.

SIR WALTER PHILLIMORE, BART.

[*Delivered by* SIR JOHN EDGE.]

This is an appeal by the plaintiff in the suit from the decree of the 15th April, 1914, of the High Court at Allahabad which varied the decree of the 6th July, 1912, of the Subordinate Judge of Moradabad.

The suit was brought to obtain a rectification of a deed of compromise dated the 27th October, 1908, which was registered. The rectification was claimed on the ground that the plaintiff had been induced to consent to the deed by the false and fraudulent statements of the defendant that the deed contained the terms of compromise which had been agreed upon between them, and upon the further ground that after the deed had been executed, and before it was registered, the defendant had fraudulently and without the knowledge of the plaintiff, inserted in the deed certain words to the effect that he should be the lambardar of the property to which the deed related. The principal and vital matter in dispute in this suit is as to whether the plaintiff and the defendant had agreed to a compromise by which the plaintiff should have an absolute property in one-half of the estate of which one Kunwar Randhir Singh had died possessed, or should have merely a life interest in a moiety

of that estate. By the deed of which the plaintiff seeks a rectification she took only a life interest in a moiety of that estate.

The plaintiff's case was that she was the widow of one Kunwar Randhir Singh, who had been born a Hindu, and was, at the time of his death, a Christian, and that as his widow she was, under the Indian Succession Act, 1865 (Act X of 1865), entitled to one-half of his property absolutely, as Kunwar Randhir Singh had died intestate, leaving no lineal descendant, but leaving persons who were of kindred to him within the meaning of the Act. Those persons who were of kindred to Kunwar Randhir Singh were his brother, the defendant, his sister, Bibi Bhagwati, his nephew, Kameshwar Nath, and his niece, Bibi Kamavati, the son and daughter of a sister of his who had died before him.

Kunwar Randhir Singh who was a nephew of Raja Shyam Singh, of Tajpur, died possessed of a considerable property which was his separate estate. On his death the plaintiff applied to the Revenue Court for mutation of names in her favour as his widow, in respect of the immovable property of which he had died possessed, and the defendant also applied for mutation of names in his favour; each claimed the whole of the property of which Kunwar Randhir Singh had died possessed to the exclusion of the other of them.

The defendant at the time denied that the plaintiff was the widow of Kunwar Randhir Singh, his contention being that the plaintiff had not been lawfully married to Kunwar Randhir Singh, and had been in fact his mistress. The Revenue Court declined to act on either of the applications for mutation of names. Kunwar Sheonath Singh, who was an uncle of the defendant, endeavoured to bring about a compromise between the plaintiff and the defendant. There can be no doubt that Kunwar Sheonath Singh considered that the plaintiff had been lawfully married to his nephew Kunwar Randhir Singh, and that she was his widow. On the 13th February, 1908, Kunwar Sheonath Singh wrote to the plaintiff stating, "I am of opinion that it would be better if you and Diggi (the defendant) should get a sulhnama (agreement of compromise) executed and registered, and come to terms on the condition that your name, as life tenant, be entered against the entire property and you enjoy the entire income, and that afterwards Diggi should become the owner of the entire property. You will be at liberty to appoint any person you like as manager, and Diggi will not interfere in the matter." Their Lordships think it right to say that in their opinion the terms of compromise which Kunwar Sheonath Singh then suggested were decidedly favourable to the plaintiff. In effect Kunwar Sheonath Singh was proposing that the plaintiff should be treated as if she was the widow of a separated and sonless Hindu.

To the terms of compromise which were suggested by

Kunwar Sheonath Singh in his letter of the 13th February, 1908, the defendant refused to agree. Negotiations with a view to a compromise were continued, and on the 7th June, 1908, the defendant wrote to the plaintiff:—

“I am coming, and at that very place I shall talk to you about the case. You should not think about the past things. You should think over what I say now. After I have seen you you are at liberty to do as you like: nobody can check you. Please have the door opened; I am coming.”

The “past things” to which the defendant alluded were obviously the defendant’s allegations that the plaintiff had been the mistress and not the wife of his deceased brother. From his request that the door should be opened, it may be inferred that the plaintiff had refused to see him. On the 12th June, 1908, Mr. Gasper, a vakil, who was the plaintiff’s legal adviser and who was acting as her vakil in the proceedings in the Revenue Court, wrote to her:—

“As regards the settlement, I am of opinion that if the settlement be made at all, it should be made according to shares under Act X of 1865, *i.e.*, you should get a moiety, and out of the other half there should be other three shares, *viz.* Kunwar Digbijai (the defendant) and (his) two sisters. If any sister is dead her children will have her share. This is according to law.”

In that letter Mr. Gasper correctly informed the plaintiff as to what her rights were as the widow of Kunwar Randhir Singh. The defendant would not agree that the plaintiff should be allowed to get one-half of the estate absolutely; he was, however, willing that she should have one-half of the estate, but for a life interest only, and those terms of compromise he proposed to her through Kunwar Sheonath Singh. She thereupon consulted her legal adviser, Mr. Gasper. His account of the interview with his client was given in reply to questions put to him in his cross-examination on behalf of the plaintiff in the suit, and it was, in their Lordship’s opinion, a correct account of what passed between him and his then client. It was as follows:—

“I do not remember on what date and when the plaintiff came to me for taking me to Tajpur. But when the plaintiff saw me, she told me that Kunwar Sheonath Singh had, on behalf of the defendant, offered her half the property as life interest, and she asked my opinion. I asked the plaintiff whether she could fight the case up to the Privy Council. She replied that she could not fight it out. Thereupon I said in reply, ‘As soon as a suit is instituted in the Court the allowance of 300 rupees a month fixed by Mr. Wild will be stopped. What will be your state then? Nobody can say who will win or lose the case.’ I also explained to her that half a loaf is better than no bread. On this the plaintiff accepted my advice. The plaintiff had said to me, ‘It has been proposed to me that I should take half the property as life interest, and I am willing to do so. What is your opinion?’ On this I gave the above advice, and after that I gave her my advice and she accepted it, and asked me to go with her [to Tajpur].”

That interview must have taken place before the 2nd October, 1908.

On the 2nd October, 1908, the plaintiff and Mr. Gasper on her behalf, the defendant and Mr. Speirs, a pleader, on behalf of defendant, and Kunwar Sheonath Singh met by arrangement at the house of Kunwar Sheonath Singh at Tajpur. What took place at that meeting and what took place at another meeting on the 3rd October, 1908, has been matter of dispute as to which there has been conflicting evidence. But according to the evidence, which their Lordships accept as correct, it was mentioned at the meeting of the 2nd October that it had been decided that the plaintiff should have an interest for her life in half of the estate of Kunwar Randhir Singh, and that on her death the property should revert to the defendant. On the 3rd October the same persons met again, and some further matters concerning the proposed compromise were discussed and agreed upon. At that meeting on the 3rd October Mr. Gasper made a note of the points upon which the plaintiff and the defendant had then agreed. That note, which was in English, was at the meeting handed to Babu Brijnandan Prasad, a vakil, to be translated by him into Urdu. Subsequently in October it was agreed that certain charges and allowances should be borne by the defendant's share. The note, as translated by Brijnandan Prasad, was subsequently given to one Abul Hasan, who was at that time a clerk in the employment of Mr. Gasper, to be fair copied by him, with the assistance of Mr. Gasper. According to the evidence of Abul Hasan, he made a fair copy of the translation of Mr. Gasper's note. Abul Hasan has sworn that he gave that fair copy to the defendant, who told him to read it out to the plaintiff, and to copy it on stamped paper. Abul Hasan said that having read out the fair copy to her he, with her permission, copied it on stamped paper, and then, having read out to the plaintiff and the defendant the copy on stamped paper, the plaintiff and the defendant signed it as an agreement of compromise to be registered.

The translation which was made by Brijnandan Prasad of Mr. Gasper's note has not been produced. The copy which was made upon stamped paper by Abdul Hasan, and was undoubtedly executed by the plaintiff and the defendant as their agreement of compromise, was not registered, as Kunwar Randhir Singh's sister Bibi Bhagwati, who was to be a party to it, refused to execute it, and it consequently became necessary to draw up and get executed a deed of compromise to which the only parties would be the plaintiff and the defendant. Although it was not registered that copy upon stamped paper which was made by Abdul Hasan would have afforded conclusive evidence as to whether it had been agreed that the plaintiff should have an absolute interest or only a life interest in one half of the estate of Kunwar Randhir Singh. That copy upon stamped paper has not been produced; it has been traced to the posses-

sion of the defendant, who has given no satisfactory explanation as to what has become of it. His final explanation that it was in a trunk which was lost on the railway, and about which he made no enquiry of the railway company, cannot be accepted and is obviously false. There has been put in evidence on behalf of the plaintiff a paper produced by her which Abul Hasan has sworn is the fair copy which was made by him of Brijnandan Prasad's translation of Mr. Gasper's note, it bears an endorsement in the writing of, and signed by Basdeo Sahai, stating: "This is the copy of the first compromise deed which was copied out on the first stamp-paper and was rejected and kept with someone whom I do not know." That endorsement is dated 29th October, 1908. Basdeo Sahai says that the date was not written by him, and that he wrote the endorsement at the end of March or the beginning of April 1909; that the paper had never been in his possession before he wrote the endorsement; that he did not read the paper, and had no personal knowledge of what he wrote; and that he wrote the endorsement at the request of one Dwarka Prasad, who brought the paper to him, and was a clerk in the employment of the defendant.

The paper is in every respect in accordance with the agreement of compromise which the plaintiff alleges was made; it is, however, in some respects at variance with the note of the terms agreed upon which was made by Mr. Gasper on the 3rd October, 1908. The plaintiff's explanation as to how and when the paper came into her possession cannot be accepted as true. Their Lordships have come to the conclusion that the paper which bears Basdeo Sahai's endorsement was not written until after the 29th October, 1908, and was concocted for the purposes of supporting the plaintiff's case; it was not filed with her plaint nor was it included in her general list of documents.

By the deed of compromise of the 27th October, 1908, which was registered, it was agreed that the plaintiff should have a life interest in half of the estate of Kunwar Randhir Singh. As their Lordships have said, there was much conflicting evidence as to what was agreed upon between the plaintiff and the defendant on that subject, but they see no reason for doubting the evidence which was given by Kunwar Sheonath Singh, Mr. Gasper, Mr. Speirs, and M. de Hoxar, and they find that the plaintiff did agree that the interest which she should take in the estate of which Kunwar Randhir Singh had died possessed should be an interest for her life only. In that respect, the representation made to the plaintiff by the defendant, and on which she executed the deed which was registered was true.

Their Lordships have no hesitation in finding that the clause as to the appointment of the defendant as lambardar was fraudulently, and without the knowledge of the plaintiff, inserted by the defendant in the deed of compromise after it had been executed and before it was registered. The High

Court has, by its decree, directed that the words " but Kunwar Digbijai Singh shall be lambardar " shall be struck out of the deed.

The High Court has also, by its decree, directed—

"that paragraph 4 of the compromise, dated the 27th October, 1908, shall be rectified so as to read that the annuities payable to Bibi Bhagwati Bibi Kamavati, and to Kameshwar Nath shall be payable only out of the share of the defendant, Digbijai Singh, in the property."

That rectification was rendered necessary by what was apparently an unintentional departure in the drafting of the deed from the terms of compromise which had been agreed upon by the plaintiff and the defendant. Although it appears to their Lordships that that departure was not the result of any fraudulent intention on the part of the defendant, it was, until explained, a ground for suspicion which must have influenced the plaintiff.

Their Lordships see no reason for doubting that the learned Judges of the High Court came to correct conclusions on the evidence in this case. The High Court made the only two rectifications in the deed of compromise to which the plaintiff was entitled, and under ordinary circumstances this appeal should be dismissed with costs. But their Lordships are of opinion that the action of the defendant throughout these proceedings was such as to disentitle him to any costs here or in either of the Courts below. Whatever difficulties, if in fact there were any, which the plaintiff might have had in proving her original marriage with Kunwar Randhir Singh according to Hindu law or their subsequent marriage according to Christian rites after they had become Christians, it is obvious from the evidence of Kunwar Sheonath Singh that plaintiff was treated by the family as the wife, and not as the mistress, of Kunwar Randhir Singh. Kunwar Sheonath Singh said in his evidence : " As far as I know, no objection was ever raised during the lifetime of Randhir Singh that the plaintiff's marriage was illegal." This litigation would most probably have been avoided if the defendant had not after his brother's death alleged that the plaintiff had been his mistress and not his wife. It also appears to their Lordships that this suit would not have been brought if the defendant had not fraudulently inserted in the deed of compromise after it had been executed and before it was registered the provision that he should be the lambardar. The insertion of that provision rendered this suit necessary. Their Lordships agree with the High Court that the defendant's own evidence in this case was far from satisfactory, that his evidence was that of an unreliable and interested witness, and that the explanations which he gave for the non-production of the deed of compromise which was executed, but was not registered, cannot be regarded as true.

Before concluding, their Lordships must express their

complete assent to the observations of the learned Judges of the High Court on the impropriety of a legal practitioner who has acted for one party in a dispute, such as there was in this case, acting for the other party in subsequent litigation between them relating to or arising out of that dispute. Such conduct is, to say the least of it, open to misconception, and is likely to raise suspicion in the mind of the original client and to embitter the subsequent litigation. As the learned Judges of the High Court have said in this case, "This is a matter which concerns the honour of the profession."

Their Lordships will humbly advise His Majesty that this appeal should be dismissed, that the defendant should not have any costs of this appeal, that neither party should have any costs in either Court below, and that in other respects the decree of the High Court should be affirmed.

In the Privy Council.

MARY LILLIAN HIRA DEVI

v.

KUNWAR DIGBIJAI SINGH.

DELIVERED BY SIR JOHN EDGE.