Privy Council Appeal No. 54 *of* 1921.

Allahabad Appeal No. 7 *of* 1919.

Narain Das - - - - - - - - - *Appellant*

v.

Abinash Chandar and another - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT ALLAHABAD.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 23RD MAY, 1922.

Present at the Hearing:

LORD BUCKMASTER.
LORD ATKINSON.
LORD SUMNER.
LORD CARSON.
SIR JOHN EDGE.

[*Delivered by* LORD BUCKMASTER.]

Their Lordships do not desire to hear the respondents in this case, for in their opinion the principle upon which it falls to be determined is one that is plain and can be simply stated.

The appellant, Babu Narain Das, is the lessee under a lease granted to him on the 12th September, 1912, by one Babu Shekhar Chand. The lease in question affected a joint family estate that was held by Shekhar Chand and his infant son, the first respondent. Contemporaneously with the lease two other documents were executed; one was a sale of a part of the family property and the other a mortgage for Rs. 50,000, both in favour of the present appellant. The lease was an unusual document, and it certainly does some credit to the ingenuity of the pleader who drew it, for he contrived to secure that the lease should at the same time serve the purpose of a lease and a collateral security for the mortgage debt, for the terms provided that out of the rent payable by the

lessee under its terms the interest that was due to him upon his mortgage debt should be deducted, the result being that after all the different payments had been made as the lease provided the gross amount of Rs. 16,775 rent was reduced to Rs. 3,804 per annum.

Proceedings were subsequently instituted on behalf of the infant son to obtain partition of the joint estate, and a decree was made on the 9th November, 1914, granting this claim. The actual partition does not appear to have taken place at present. Proceedings were also instituted for the purpose of setting aside the contemporaneous mortgage and the sale, and these ended by a compromise, the effect of which was that all that the infant could reasonably claim as his share of the family estate was released from the mortgage debt, and the sale deeds were set aside. That compromise did not deal with the lease, which was made the subject of the subsequent proceedings out of which this appeal has arisen.

The learned Additional Judge before whom the matter first came found that the lease was one which the father could properly execute in discharge of his position as manager of the joint family estate. He examined all the rather unusual conditions of the lease with extreme minuteness, and came to the conclusion that upon the whole it was not possible for the infant to assert that the terms were so unreasonable that the lease should be set aside, but in his minute examination of the actual literal contents of the document he appears to have overlooked what is the fundamental question that lies at the root of the whole of these proceedings, that is, whether the lease as it was drawn with its provisions for application of the rent, was a lease which could be regarded as fair and reasonable and in proper exercise of a manager's powers. As has already been pointed out, the lease was really in effect a collateral security for the mortgage debt, and the result was that the infant's property was put into pledge to secure the repayment of the moneys in respect of debts improvidently contracted by his father. Their Lordships think that the whole of this matter is effectively summed up in a sentence of the judgment of the High Court where they say that they regard the lease as an unfair and inequitable lease in regard to the plaintiff's rights, and that the offer put forward on behalf of the appellant that he is prepared to make all necessary alterations in the lease, in order to reduce it to a proper and reasonable form, is one that cannot be considered for the purpose of influencing their judgment, and with that opinion their Lordships agree. It is impossible to do what Counsel on behalf of the appellant have ingeniously urged, to regard this provision for payment of the interest and any other provision that might be regarded as objectionable in the lease as in the nature of an independent bargain between the lessee and the lessor which can be cut out and separated from the general structure of the lease, and then can be so dealt with that the infant's property is relieved from these offensive provisions. The lease must be

regarded as a whole. It must be regarded as it was drawn on the 12th September, 1913, and so regarding it their Lordships think it is impossible successfully to contend that this lease is of such a character that would justify the manager of a joint family estate binding the joint family property by means of its terms.

There only remains the consideration of one or two trivial points that have been raised with regard to the claim for possession, and the arrangement for payment of interest on certain sums of money to which reference will be made.

The claim for possession can be dealt with very smply. This estate has not been partitioned, though the decree for partition has been made. The decree appealed from cannot reasonably be intended as a decree to put the plaintiff into physical possession of that which still remains one undivided half of the whole. It only means that he has been excluded from his proper share of the property jointly held, and that he is entitled to possession for the purpose of securing his position.

With regard to the other matters one question is as to the sum of Rs. 1,100 paid into the Bank by the appellant consequent upon a tender that he made to the first respondent. The tender was accompanied by a condition which prevented it being a perfect and complete tender, and the respondent was under no obligation to accept it. It follows, therefore, that that cannot be regarded as the equivalent of payment, and that sum, if be is still in the control of the appellant, should be handed over to the respondent as part of the payment which he has to make. If, in fact, it is in any way in joint control so that it can be affected by an order of the Court, the Court will order that it be released and the money paid over to that respondent.

With regard to the interest upon it, there is nothing in the circumstances in which it was paid that can relieve the appellant from his liability to pay interest upon that sum. If it has earned interest that will go *pro tanto* in reducing his liability, but subject to that his liability remains.

The final question with regard to the amount of interest that has been allowed against the appellant can be disposed of in a few sentences. The rate is 12 per cent. It appears, according to our notions in this country, a high rate of interest, but that has nothing whatever to do with the matter which their Lordships have to consider. It may very well be that having regard to the local conditions in India, it is a very proper and reasonable rate to impose, and their Lordships see no reason whatever why any alteration should be made as to the amount.

It follows, therefore, that this appeal must fail, and their Lordships will humbly advise His Majesty that it be dismissed with costs.

In the Privy Council.

NARAIN DAS

v.

ABINASH CHANDAR AND ANOTHER.

DELIVERED BY LORD BUCKMASTER.

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