Privy Council Appeal No. 18 *of* 1927.

Raoji Valad Rupa Kolhati and others - - - - *Appellants.*

v.

Kunjalal Hiralal Agarwala, since deceased, and others - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 27TH FEBRUARY, 1930.

Present at the Hearing.

LORD ATKIN.
LORD TOMLIN.
SIR LANCELOT SANDERSON.
SIR GEORGE LOWNDES.
SIR BINOD MITTER.

[*Delivered by* SIR GEORGE LOWNDES.]

Balmukund Thakurdas, a Vaisya by caste, died in 1904 possessed of property of the value of from 12 to 15 lakhs of rupees. He left surviving him two widows and three sons by a Kolatin concubine named Chunna. The widows inherited his estate, the three illegitimate sons being entitled only to maintenance. After his death there was litigation between the widows, which was eventually settled by a division of the estate between them. It appears to have been part of the arrangement then come to that Champabai, the senior widow, should be responsible for the maintenance of the illegitimate sons, and on the 18th March, 1906, by a deed of that date, she transferred to them absolutely certain lands of the estate valued at Rs. 5,000, in full discharge of their maintenance rights. Champabai died in 1912, and her co-widow in 1913, and Balmukund's estate then passed to his reversionary heirs now represented by the respondents in this appeal. In 1921 they sued to recover the lands the subject of

Champabai's transfer, on the ground that the deed was not binding upon them. By this time the greater part of the lands had been alienated by the sons and the alienees were joined with them as defendants to the suit. The plaintiffs (respondents) settled with the alienees of a portion of the property (defendants 6-8), and the suit proceeded against the sons (appellants 1-3), and the other alienees (appellants 4 and 5).

In the Courts in India the sons' right to maintenance was disputed on the ground that they were not *dasiputras* of Balmukund. The term *dasiputra* no doubt originally meant sons of a female slave, but in Western India, at all events, it has come to mean sons by a kept mistress of one of the lower castes (see *Rahi and others* v. *Govind Valad Teja*, I.L.R. 1 Bomb. 97 : *Sadu* v. *Baiza and Genu*, I.L.R. 4, Bomb. 37). This does not appear to have been disputed by the respondents, the only questions raised being whether Chunna was a kept mistress, and in the case of the 1st appellant whether Balmukund was his father. These questions, which are matters of pure fact, were decided in favour of the appellants by both Courts. They also held concurrently that as *dasiputras* the sons were entitled to maintenance during their lives out of Balmukund's estate, and their Lordships have no doubt on the authorities that this is correct. The only difference between the Courts in India was as to the validity of the transfer by Champabai. The Subordinate Judge was of opinion that it was a fair settlement of the maintenance claim, and as such within the competence of the widow, while the Court of Appeal thought that it was excessive, and therefore not binding on the reversioners. As a result of their respective findings the Subordinate Judge dismissed the respondents' suit, and the High Court decreed it in full.

On the appeal to His Majesty in Council, the respondents have not appeared, and their Lordships have, therefore, had no assistance from counsel on their behalf.

The Subordinate Judge held that the widow was not bound to pay maintenance charges such as these out of the income of the estate, and the learned Judges of the High Court appear to have acquiesced in this view, and so far as their Lordships are aware there is no authority to the contrary. The widow during her lifetime represents the estate, and Mr. Mayne, in dealing with her powers of alienation, states that " she certainly cannot have less power than the manager of a Hindu family " (Mayne's Hindu Law, Section 634). It has also been established by a recent decision of this Board (*Ramsumran Prasad* v. *Shyam Kumari*, 49 I.A. 342) that a compromise entered into *bona fide* by a Hindu widow which is reasonable and prudent, and for the interest of the estate, is binding upon the reversioners. Under these circumstances their Lordships think that the only question in this appeal is whether the settlement made by Champabai with the illegitimate sons was one of this character. Their right to maintenance was not for the lives of the widows only, but for

their own lives, and was in effect a charge upon the estate in whosoever's hands it might be. It was certainly not unreasonable that a widow belonging to one of the higher castes should think it best to get rid once for all of the claims of low caste illegitimate sons, and it has not been suggested that the settlement was other than *bona fide*. In their Lordships' opinion, therefore, it must be judged merely as a business transaction. The estate was a large one, and the sons had been brought up evidently as members of the family. The Subordinate Judge, himself a Hindu, thought that Rs. 100 per month would have been a reasonable sum to allow for the maintenance of the three sons. The High Court did not dissent from this estimate, and it does not appear to their Lordships to be in any sense an extravagant one. At the date of the deed the sons were all young men with a considerable expectation of life, and Rs. 5,000, which is recited to be the value of the land transferred, would therefore represent less than five years' purchase of their annuity. Their Lordships cannot think that a settlement in full of their claim to maintenance upon these terms was from the point of view of the estate other than a reasonable and prudent transaction. The High Court seem to have thought that the value of the land was really greater than the Rs. 5,000 at which it was taken in the deed, but there was no reason why the widow should have understated it, and there is no evidence upon which their Lordships could rely to show that it was worth more in the beginning of 1906. It has, no doubt, increased largely in value since, but it is obvious that the prudence of the bargain must be judged solely on the estimation of value at the date when it took place.

Their Lordships are accordingly of opinion that the transfer which the respondents sought by their suit to avoid was one within the competence of the widow, and, as a reasonable and prudent compromise of an existing claim upon her husband's estate, was binding upon the reversioners. They will, therefore, humbly advise His Majesty that the decree of the High Court should be set aside, and the decree of the Subordinate Judge restored, and that the respondents should bear the costs both in the High Court and before this Board.

In the Privy Council.

RAOJI VALAD RUPA KOLHATI AND OTHERS

v.

KUNJALAL HIRALAL AGARWALA, SINCE DECEASED, AND OTHERS.

DELIVERED BY SIR GEORGE LOWNDES.

Printed by
Harrison & Sons, Ltd., St. Martin's Lane, W.C.2.

1930.