

Privy Council Appeal No. 11 of 1945
Bombay Appeal Nos. 10 and 15 of 1942

Ramdhandas Jhajharia - - - - - *Appellant*

v.

Ramkisondas Dalmia 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 30TH JULY, 1946

Present at the Hearing :

LORD MACMILLAN

LORD SIMONDS

LORD DU PARCQ

MR. M. R. JAYAKAR

SIR MADHAVAN NAIR

[*Delivered by* LORD SIMONDS]

In this appeal, which is brought from a judgment and decree of the High Court of Judicature at Bombay in its Appellate Jurisdiction dated the 8th October, 1942, reversing two judgments and a decree of that Court in its Ordinary Civil Jurisdiction, their Lordships are confronted with an unfortunate difference of opinion upon what appears to be a pure question of fact. The Appeal Court (Beaumont C.J. and Chagla J.) reluctantly and with a full appreciation of the weight to be attached to the decision of the Trial Judge (Kania J.), who had seen and heard the witnesses, felt constrained to take a different view of the facts from that which he had taken, and their Lordships are clearly of opinion that they were right in doing so.

The substantial question can be shortly stated.

The joint Hindu family, of which the appellant is the Karta, carried on certain family businesses, including an agency firm in the name of Jhajharia Dhandhanian and Company, which had until February, 1939, acted as selling agents for the Sholapur Spinning and Weaving Company, Limited, which will be called "the Company," and in the month of June they owned 163 shares of Rs. 1000 in this Company which stood as to 56 in the name of the appellant, as to 106 in the name of his son Nandkishore and as to the remaining one in the name of another nominee.

At the same date these shares were pledged as to 104 with the Allahabad Bank, Limited, Calcutta, and as to 59 with the Punjab National Bank, Limited, Calcutta, to secure certain overdrafts. But the Company claimed a lien upon them in respect of a large sum alleged to be due from the agency firm. On the other hand the firm had a large claim against the Company in respect, as they alleged, of an unlawful termination of the selling agency.

On the 9th March, 1939, the Company resolved to exercise their lien and notice of this resolution was duly given to the agency firm.

At about the same time the pledgee Banks were pressing for payment of the overdrafts. From other quarters also the appellant's family were being harassed. It is beyond doubt that they were in grave financial embarrassment.

The business of the Company was at all material times managed by a firm of managing agents known as Ramkumar Morarka, the second respondents to this appeal, of which the principal partner was Ramkumar Shrinivas, sometimes called Ramkumar Morarka, the third respondent, who was also a director of the Company. It appears to be common ground that this Ramkumar Morarka was on unfriendly terms with the appellant.

It is unnecessary to rehearse the events of April and May, 1939, during which the appellant's family were in ever-increasing difficulties. At the end of May the first respondent Ramkisonadas Dalmia appeared upon the scene. He was a man of wealth and position, thought to be favourably disposed to the appellant, and it was hoped that by his intervention the family fortunes might be retrieved. He had shortly before through a nominee acquired the managing agency of some sugar mills in which the appellant's family were interested.

It is at this point that the question of fact arises. The 163 shares of the Company owned by the appellant's family were in June, 1939, disposed of (a neutral word will in the first place be used) by the Banks to the first respondent. The appellant alleges that they were mortgaged to the first respondent and sub-mortgaged by him to the second respondent. The respondents other than the first respondent claim that they were sold to the first respondent and that then 100 of them were sold by him to the second respondent and that the remaining 63 were first pledged and subsequently sold to the second respondent.

Upon this apparently simple question oral evidence voluminous and bewildering has been given and their Lordships find themselves in agreement with Chagla J. who in the Appeal Court said: "In a case where oral testimony is of such an unreliable and untrustworthy character the safest policy would be to let the documents speak for themselves." This does not mean that, when the question is whether a transaction is a sale or a mortgage, form is to be preferred to substance. It is an inviolable rule that upon such a question the Court must find the substance behind the form. But where the oral evidence is unreliable and contradictory the Court cannot safely depart from the written evidence of the documents.

It is, then, of first importance to see from the documents what the Banks did with the shares of which they held the certificates together with blank transfers. They were concerned to realise the shares to the best advantage. They knew that so long as the Company claimed a lien upon them they were not easily marketable and that, though negotiations were afoot for the release of the lien, the position was uncertain. The evidence of the documents is overwhelming that they did just what it is inherently probable they would do; they disposed of the shares by way of sale to the first respondent. Their Lordships think it unnecessary to repeat the careful analysis of the transaction by the Banks which appears in the judgment of the Appeal Court. From the books of the Banks, from the formal documents and above all from the correspondence between the Banks and the appellant one thing emerges clear beyond all doubt, viz., that the Banks acted on the footing that they were selling the shares to the first respondent and crediting the appellant with the net proceeds of sale. It appears to their Lordships that the learned trial Judge in his careful and elaborate judgment did not give sufficient weight to this aspect of the case.

Nor has the appellant offered any satisfactory explanation of another matter which appears to be of decisive importance. The formal transaction in respect of the shares took place on the 10th June, 1939. But on the 5th June a petition had been presented to adjudicate the appellant insolvent and on the 6th June he had through his attorneys given an undertaking to the Court that he would not alienate encumber or dispose of any of his assets. It follows that on the 10th June no one but the Banks, who

were unaffected by the undertaking, could deal with or give any title to the shares in question and there appears to be no justification whatever for supposing that they under the colour of documents which exhibited a sale and nothing else were joining with the appellant in carrying out a quite different transaction.

This is sufficient to conclude the case against the appellant, for if the Banks sold the shares to the first respondent as they lawfully might, the appellant at least could not maintain his suit for redemption whatever might have been the subsequent transactions between the first respondent and other parties. But their Lordships think it proper to refer to one other matter.

It has been stated that the appellant's account of the transaction was that the shares were not sold but mortgaged to the first respondent and by him sub-mortgaged to the second respondent. This was the story baldly set out in the original plaint, and a more unlikely story in view of the relations between the parties it would be difficult to imagine. This seems to have occurred to the appellant and at a later stage he endeavoured to give it the appearance of greater credibility by alleging that, while all the 163 shares were to be mortgaged and sub-mortgaged as stated, yet in regard to 100 of them, if the third respondent succeeded in getting the Company to pay a sum of Rs. 3,00,000 in satisfaction of the appellant's claim for the unlawful determination of the selling agency, then the third respondent should become the purchaser of such shares at Rs. 2000 per share. This was put forward as the reason why the third respondent was induced to entertain a proposal which otherwise appears to have offered him no advantage. To their Lordships as to the learned Judges of the Appeal Court this amended story is wholly unacceptable, and without discussing it in further detail they will be content to adopt and repeat what was said by Beaumont C.J.: "It seems to me quite impossible to accept on behalf of the plaintiff a story, inconsistent with his plaint, set up by witnesses who had failed to mention the matter on two previous occasions when it would have been relevant to do so, which is not supported by any shred of documentary evidence, which is contradicted by the documents of the other side and which is inherently most improbable." In this view Chagla J. concurred. Their Lordships consider that this is the right conclusion to be drawn from all the evidence in the case and that the appeal should be dismissed with costs to respondents Nos 2 to 7. They will humbly advise His Majesty accordingly.

In the Privy Council

RAMDHANDAS JHAJHARIA

vs.

RAMKISONDAS DALMIA AND OTHERS

DELIVERED BY LORD SIMONDS

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