

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Auseri Lal, since deceased, and now represented by Dhanipal Das and another v. Raja Maneshar Bakhsh Singh, from the Court of the Judicial Commissioner of Oudh ; delivered the 10th May 1906.*

Present at the Hearing :

LORD DAVEY.

LORD ROBERTSON.

LORD ATKINSON.

SIR ANDREW SCOBLE.

SIR ARTHUR WILSON.

[*Delivered by Lord Davey.*]

The original Plaintiff Auseri Lal was the head of a joint Hindoo family. He is now deceased, and the present Appellants, as the surviving members of the family, have been substituted for him on the record. Auseri Lal, on behalf of the family, formerly carried on the business of a banker and money-lender in the District of Sitapur in Oudh. And in the course of his business he had, previously to the transactions which are the subject of this Appeal, lent money to the Respondent, who was and is the Talukdar of Mallanpur in the same District.

In the year 1886 the Respondent, being then largely involved in debt, was, on his own application, declared by the Chief Commissioner of Oudh a disqualified proprietor under the provisions of the Oudh Land Revenue Act, 1876, and his property was placed under the charge of the Court of Wards on the 12th August in that

year. The Respondent's property remained under such charge until some time in the month of July 1898, when it was released to him, and he resumed possession. While the estate was under its charge the Court of Wards made an allowance of Rs. 1,250 per mensem to the Respondent for the maintenance of himself and his family.

On the 4th February 1889 the Respondent, without the sanction of the Court of Wards, borrowed from Auseri Lal the sum of Rs. 4,500, and executed in his favour a bond which was duly registered for that amount stipulating that he would repay the amount in two years with interest at the rate of Rs. 2 per mensem payable half-yearly out of his allowance of Rs. 1,250 per mensem, and stipulating further that in case default was made in the payment of interest he would pay compound interest at the same rate until the amount secured by the bond was fully paid off and satisfied. The Respondent did not pay any sum either for principal or interest due on this bond, and after it had become due negotiations were apparently opened by his officers on his behalf with the Plaintiff for a further advance at a lower rate of interest. In the result an account was settled between the Respondent and Auseri Lal of the amount due on the bond for Rs. 4,500, and it was found that that sum with interest and compound interest at the rate of 2 per cent. per mensem, up to the 13th day of January 1892, came up to Rs. 8,750. On the last-mentioned date Auseri Lal advanced to the Respondent the further sum of Rs. 1,250, and the latter without the sanction of the Court of Wards executed in favour of the former a bond, also registered, for the total sum of Rs. 10,000, stipulating that he would repay the amount in seven years with interest at the rate of Rs. 1. 8

per cent. per mensem payable half-yearly, and stipulating further that in default of payment of interest on due dates he would pay compound interest at the same rate, and that he would pay interest and compound interest on the amount secured by the bond until it was fully paid off and satisfied.

The present suit was brought on the bond of the 13th January 1892. The defence is first that the Respondent being, at the date of the bond, a disqualified proprietor had no power under the Act to borrow money without the sanction of the Court of Wards, and, secondly, that the bargain was an unconscionable one, and procured by the exercise of undue influence within the meaning of Section 16 of the Indian Contract Act, 1872, as amended by Section 2 of Act VI. of 1899.

The first point depends on the construction and effect of the group of sections (161 to 177) in the Oudh Land Revenue Act, 1876, intituled "Chapter VIII. Court of Wards." Section 162 defines the persons who shall be held to be disqualified to manage their own estates, including (*g*) persons declared by the Chief Commissioner on their own application to be disqualified. By Section 166 the jurisdiction of the Court of Wards extends to the care and education, and to the management of the property, of the persons subject thereto. By Section 167 the Court of Wards may appoint managers of the property of disqualified proprietors, and if such proprietors be minors, idiots, or lunatics, may appoint guardians for the care of their persons. By Section 170 the manager appointed by the Court of Wards may collect the rents of the land entrusted to him as well as all other money due to the disqualified proprietor, and may, subject to the control of the Court, grant or renew leases of a limited

duration. The more important sections are 173 and 174.

“ 173. Persons whose property is under the superintendence of the Court of Wards shall not be competent to create without the sanction of the Court any charge upon or interest in such property or any part thereof.

“ 174. No such property shall be liable to be taken in execution of a decree made in respect of any contract entered into by any such person while his property is under such superintendence.”

From a perusal of the group of sections above referred to their Lordships are of opinion that it was not intended to interfere with the personal status or rights of an adult disqualified proprietor who is neither idiot nor lunatic, except as regards the management of his property or anything expressly prohibited. There is no prohibition of a disqualified proprietor contracting debts or borrowing money, and it is contemplated in Section 174 that such a person may enter into contracts which, but for the provisions of that section, might result in his property being taken in execution. But the disqualified proprietor may not without the sanction of the Court create any charge upon his property. It was argued however that to allow a disqualified proprietor to contract debt would enable him by anticipation to waste the estate when restored to his care, and so defeat the objects of the Act, and would therefore be inconsistent with the other provisions and purposes of the Act. This argument would have been a cogent one for the consideration of the Legislature in framing the Act. But their Lordships think that there is no necessary implication of a prohibition to contract personal obligations, and they are not entitled to read into the Act a curtailment of the proprietor's personal rights which they do not find there.

Their Lordships were referred to the case of *Mohunmud Zahoor Ali Khan v. Mussumat Thakooranee Rutta Koer* (11 Moo. Ind.

Ap. p. 468), in which it was said that Sir James Colvile, delivering the Judgment of this Board, had assumed that a disqualified landowner whose estate had been placed under a manager by the Court of Wards under Bengal Reg. LII. of 1803 was incapacitated from contracting debts, as had in fact been decided by the Sudder Dewanny Court at Agra. It was not, however, necessary to consider the point, as their Lordships held that the necessary formalities had not been complied with for making the person in question a disqualified proprietor, and gave judgment for the amount due on the bond. There was therefore no decision on the point. In the case of *Rai Balkrishna v. Mussumat Masuma Bibi* (9 Ind. App. 182) the language of the marginal note is misleading, for the only question was whether the proprietor was competent to convey the property by mortgage or sale while the estate was under the management of the Court of Wards, and nothing was decided or said on the question now under consideration. Their Lordships agree with the decision come to by both Courts below that the Respondent was not incompetent to execute the bond in suit.

On the other point the learned Counsel for the Respondent admitted that the case rested entirely on the question whether the interest charged in the two bonds was reasonable. The Subordinate Judge held that the rate of interest was high in this sense, that compound interest was charged. Simple interest at Rs. 1. 8 per cent. per mensem he thought would not have been high. He held that the amended Section 16 of the Indian Contract Act did not apply to the case, but on a mistaken view of certain English authorities he was of opinion that wherever a transaction or contract appears to a Court of Equity to be a "hard bargain" it cannot be enforced in its "entirety." And holding that

this was a "hard bargain" he said "I do not mean that the present is a case of actual fraud or undue influence, but it is certainly a case of inequitable dealing." In the result he decreed the claim for Rs. 10,000 principal and simple interest at 18 per cent. per annum.

In the Court of the Judicial Commissioner it was held that there was a presumption that there had been on the part of the then Plaintiff an unconscientious use of power arising from the circumstances and conditions of the contracting parties. In other words, the Respondent's consent to the transactions was caused by undue influence within the meaning of the amended Section 16 of the Indian Contract Act, and the transaction was therefore voidable. Accordingly the Court gave the Plaintiff a decree for Rs. 4,500 (the principal money under the first bond) with interest at 6 per cent. a year from the 4th February 1889, and Rs. 1,250 (the additional advance on the second bond) with interest at the same rate from the 13th January 1892.

Auseri Lal himself was advanced in years at the respective dates of the two bonds in suit, and states that his nephew Madho Ram, one of the present Appellants, looked after his affairs. Madho Ram's evidence was extremely unsatisfactory. He professed not to remember what took place when the bonds were executed, and not to know what was the Court of Wards or what the word "Court" meant. This evidence does not assist the Appellants' case in any way. The only other evidence contained in the Record is that of the Respondent himself. He states that his allowance from the Court of Wards was not sufficient to enable him to pay the interest on the bonds, and the only property from which he could satisfy his debt was the jewellery belonging to

the females of his family, the value of which however he did not know. He further stated that this jewellery had been pledged to Auseri Lal some seven or eight years ago, though whether before or after the deed of 1892 he could not say, and that it had not been redeemed. He stated that no fraud or undue influence was practised upon him on taking the deed of 1889 or that of 1892.

The fair result of this evidence is that the Respondent, through his improvidence, was in urgent need of money, and owing to his estate being under the care of the Court of Wards he was in a helpless position. There was no fraud in the matter, and no pressure was put upon the Respondent by Auseri Lal or his agents to induce him to accept the conditions offered to him. And indeed the fact of the interest being reduced on the second transaction from 24 per cent. to 18 per cent. points to some negotiations having taken place between them. But it must be taken that the Respondent was compelled by his circumstances to accept the terms which were offered to him both in 1889 and 1892.

Their Lordships are of opinion that although the Respondent was left free to contract debt, yet he was under a peculiar disability and placed in a position of helplessness by the fact of his estate being under the control of the Court of Wards, and they must assume that Auseri Lal, who had known the Respondent for some 50 years, was aware of it. They are therefore of opinion that the position of the parties was such that Auseri Lal was "in a position to dominate the will" of the Respondent within the meaning of the amended Section 16 of the Indian Contract Act. It remains to be seen whether Auseri Lal used that position to obtain an unfair advantage over the Respondent.

The Subordinate Judge was wrong in deciding the case in accordance with what he supposed to be English equitable doctrine. He ought to have considered the terms of the amended Section 16 only. He also mistook the English law. Apart from a recent Statute an English Court of Equity could not give relief from a transaction or contract merely on the ground that it was a hard bargain, except perhaps where the extortion is so great as to be of itself evidence of fraud, which is not this case. In other cases there must be some other equity arising from the position of the parties or the particular circumstances of the case. But, although he was wrong in the reasons for his Judgment, the Subordinate Judge may be right in his findings of fact. He finds that simple interest at Rs. 1. 8 per cent. per mensem (18 per cent. per annum) would not have been high, and their Lordships do not find that the Court of the Judicial Commissioner expressed any dissent from this finding. On the other hand, their Lordships think that the Subordinate Judge must be taken to have found that the charging of compound interest in the circumstances was unconscionable, and they understand the Court of the Judicial Commissioner also to have so found. Their Lordships are not disposed to differ from a concurrent finding of the Courts below, even if it be not strictly a finding of fact. The result is that their Lordships must hold that the lender used his position to demand and obtain from the Respondent more onerous terms than were reasonable, and the bond sued on must be set aside. Their Lordships, however, think that in the particular circumstances of the present case justice will be met by allowing the Appellants simple interest at 18 per cent. per annum on the sums advanced by Auseri Lal throughout.

Their Lordships agree with the Court of the Judicial Commissioner that the letters written

by the Respondent or his agent, which were referred to by Mr. Bonnerjee, do not amount to a ratification of the transaction.

Their Lordships will therefore humbly advise His Majesty that the Decree of the Court of the Judicial Commissioner of Oudh, dated the 3rd June 1902 (except so far as it directs that the bond sued on be set aside, and that the costs of the original suit be paid by the Defendant to the Plaintiff), be varied, and as varied stand as follows (that is to say), that it be ordered that the Respondent pay to the Appellants the sum of Rs. 4,500, with simple interest at the rate of 18 per cent. a year from the 4th February 1889 to the date of payment, and the sum of Rs. 1,250, with simple interest at the same rate from the 13th January 1892 to the date of payment, with proportionate costs on the amount decreed to be settled by the Judicial Commissioner in case of difference, and that as to the rest each party bear his own costs. There will be no costs of this Appeal.

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