Privy Council Appeal No. 62 of 1920.

Pandurang Krishanaji - - - - - - - *Appellant*

v.

Markandeya Tukaram and others - - - - - *Respondents*

FROM

THE COURT OF THE JUDICIAL COMMISSIONER, CENTRAL PROVINCES.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 28TH OCTOBER, 1921.

Present at the Hearing:

LORD BUCKMASTER.
LORD CARSON.
SIR JOHN EDGE.
SIR LAWRENCE JENKINS.

[*Delivered by* LORD BUCKMASTER.]

The plaintiff in the suit out of which this appeal has arisen is the first respondent. His plaint asked that a joint estate in certain property known as Mauza Khandal should be partitioned, and that it might be declared that he was entitled to an 8-anna share in the property. The suit was dismissed by the District Judge of East Berar, but was granted in the Court of the Judicial Commissioner. The respondent's title rested on two deeds, the first, dated the 2nd February, 1914, by which two grantors, Kanhoba and Vishwanath, the sons of Raghu, purported to convey the property in question to one Hari Govind Damle for Rs. 9,100, and the second dated the 26th June, 1914, by which Hari Govind Damle conveyed the same parcels to the said respondent for Rs. 15,000. So far as the documentary title is concerned, it is complete, and if in fact Vishwanath and Kanhoba had the right to convey the two shares covered by the deed of the 2nd February, 1914, there could be no answer to the respondents'

claim. The first question that arose in the suit and remains for decision upon this appeal is whether those two signatories possessed that right or no, and the second whether if no such right existed, the appellant was estopped from setting up the defect. The dispute arises in these circumstances. The village in question was originally part of the joint estate of a joint Hindu family, which had separated before 1906, leaving this village undivided. The joint family had been constituted by the four sons of Raghu. The eldest of these, Krishna, died before the separation. The appellant Pandurang was one of the sons of Krishna, and so also were the second and third respondents. The other respondents, with the exception of No. 8, were descendants of two of the dead sons of Krishna, and respondent No. 8 Musummat Sakhubai represented Luxman, the second son of Raghu, who was also dead. The two other sons of Raghu were, as has already been stated, Kanhoba and Vishwanath, who were each entitled to a one-fourth share.

Pandurang was the registered holder of the land. In 1906 disputes, with the exact nature of which their Lordships are unacquainted, had arisen between him and the other joint members. Accordingly on the 8th September, 1906, a document was executed which has given rise to the question that has now to be determined. It was stated to be a deed of settlement by Pandurang in favour of Kanhoba and Vishwanath and Sakhubai, the widow of Luxman, and it took the form of a statement made by Pandurang to his two uncles. It sets out their relationship to him, that a partition has been effected between them and him in respect of the ancestral property, and that only certain ancestral izra villages remain, of which Mauza Khandal is one. It continues by referring to the fact that disputes had often arisen and tended to arise between them and himself, and it then proceeds to put forward the terms of the settlement. The effective part of those terms is this, that he, Pandurang, will manage in future all the village affairs and take Rs. 180 per annum as his salary and remuneration for doing it; that he will pay the necessary expenses, and that if the village profits were not sufficient to meet the expenses and there might be a loss, his two uncles should pay on account of the loss in proportion to their shares. It then concludes in this way: "If you raise contentions in future in respect of the loss, they shall not be heard, and you shall be held to have lost, under this vyavastha oatra (deed of settlement), your shares in the villages. The shares shall, however, be lost if the losses are demanded and not paid in the presence of the panch." It finally refers to a suit pending between himself and his uncles in respect of the villages, and states that it has been compromised under the settlement. That document was signed by Pandurang alone, but it was presented for registration by Vishwanath, one of the two uncles of Pandurang, and registered accordingly. Nothing appears to have been contained in the document affecting Sakhubai, and her only defence to the suit is a statement that Pandurang is estopped from disputing the sale deed of the 2nd February, 1914. Pursuant to the arrangements

made in that agreement, Pandurang continued to manage the estate and to make the payments. It must also be assumed that the civil suit was compromised. It appears that in the course of management there was a loss in respect of this particular village, Mauza Khandal. The other villages, although the exact accounts have not been produced, apparently roughly balanced, but as to Mauza Khandal, there was, in 1910, a loss for the four years of a total of Rs. 1,069. The fact that this loss had been incurred was mentioned to the two uncles of Pandurang, and a letter to him in the handwriting of Vishwanath was drawn up on the 11th April, 1910, and signed by both of them in these terms: "You have demanded from us Rs. 533-1-3 pies (rupees five hundred and thirty-three, one anna and three pies) found due on account of loss in Khandal Izara for four years from 1907. But we cannot pay the same. You are therefore liable for the profit or loss which accrued up till now and may accrue in future. We are not to take a share and pay the loss. You may make a management as you like."

It was not registered. The arrangements evidenced by those two documents would be sufficient for the purpose of conveying the shares of Kanhoba and Vishwanath to Pandurang, but the real argument that has been brought before this Board against that effect being given to these transactions is that the first document was not formally signed by Vishwanath and Kanhoba, and that the second document was not registered and therefore could not be given in evidence. Their Lordships think that both these contentions fail. With regard to the first, the arrangement was a perfectly good one according to Hindu law, if accepted by Vishwanath and Kanhoba and acted upon by Pandurang, even although the document was not in fact signed by the persons to whom it was addressed. That Pandurang did act upon it is beyond dispute. The only question that follows is whether the subsequent letter was an effective instrument necessary for the purpose of transferring the property, or whether it was only a piece of evidence not constituting acceptance of the earlier proposal but showing that it had been accepted and that Vishwanath and Kanhoba, admitted that the condition upon which the first agreement was to operate had in fact arisen. Their Lordships think that the latter is the true interpretation. The document itself contains no statement of conveyance or release. It repeats that Vishwanath and Kanhoba are not to take a share and pay the losses because they are unable to do so, and read, as it must be read, as a sequel to the earlier document which had been drawn upon in 1906, it is a recognition that the share will pass as that document provides. There was consequently no need for its registration.

It is then urged that in point of fact the original document dealt with the share in all the villages as one, and the evidence goes to show that the only village with regard to which the accounts were placed before Vishwanath and Kanhoba was the village of Mauza Khandal, to which alone the letter relates. Their Lordships think that there is no weight in this contention. There

would be no reason, even on the original agreement, to prevent the parties dealing with the one village instead of the three. The terms are clumsily expressed, and the letter merely shows that all parties accept the interpretation of the earlier document as permitting each share to be dealt with individually instead of all being necessarily grouped together. It is therefore not surprising that this contention does not appear to have been raised at any time prior to the actual hearing before their Lordships.

There remains the matter which, so far as can be gathered from the judgments in the courts from which this appeal has proceeded has been the real controversy, and that is that whatever be the true effect of the transaction Pandurang is estopped from setting it up against the respondent. The first estoppel that is put forward, which was undoubtedly the estoppel upon which the real issue was taken, was said to arise by virtue of the fact that Pandurang had himself attested the first deed which had been executed on the 2nd February, 1914, conveying the property to Damle. The issue is framed in these words: "Is defendant No. 1 (*i.e.* Pandurang) estopped from questioning the right title and interest of defendants Nos. 9 and 10 (*i.e.* Vishwanath and Kanhoba) in the property transferred under the sale deed dated the 2nd February, 1914, on account of the fact that he attested that deed." And then a further issue is raised as to whether he attested with knowledge and consented to the transfer. Before their Lordships consider the circumstances in which that attestation took place, they think it is desirable to emphasize once more that attestation of a deed by itself estops a man from denying nothing whatever excepting that he has witnessed the execution of the deed. It conveys, neither directly nor by implication, any knowledge of the contents of the document, and it ought not to be put forward alone for the purpose of establishing that a man consented to the transaction which the document effects. It is, of course, possible, as was pointed out by their Lordships in the case of *Banga Chandra Dhur Biswas* v. *Jagat Kishore Chowdhuri*, in 43 I.A., at page 249, that an attestation may take place in circumstances which would show that the witness did in fact know of the contents of the document, but no such knowledge ought to be inferred from the mere fact of the attestation. Their Lordships think that a mistake has arisen in this case, not for the first time, from assuming that attestation carries some greater weight. In the present instance the learned District Judge says in his judgment at page 47: —

> My impression is that Pandurang did not understand the nature of the consequences that may accrue from his conduct and what interpretations would be put upon the fact of his signing the deed as an attesting witness. I therefore hold that the defendant Pandurang is not estopped from raising the question that he was not bound by his mere signature to to show that he consented to the result that he was not entitled to them.

That is the wrong way of approaching the question. Pandurang is not estopped by his mere signature unless it can be established by independent evidence that to the signature was

attached the express condition that it was intended to convey something more than a mere witnessing of the execution, and was meant as involving consent to the transaction. The statements made by the learned Judicial Commissioners at page 61 of the record are even more startling, and they appear to show that the error as to the effect of attestation must be very widespread. They state there: "The mere attestation of a sale deed does not work an estoppel unless it is pleaded and proved that such attestation has induced a belief followed by action." Estoppel does not arise from any such circumstance. As already stated, attestation itself does not effect it, nor does the belief of other parties as to the meaning of attestation affect the man who has placed his signature as a witness, unless it can be established that he knew that that belief would arise, and signed with that intent. A similar statement is to be found later on in the judgment, where the learned Judges say:—

> We think that attestation by a person who has or claims any interest in the property covered by the document must be treated, in the absence of any evidence to show that he was tricked into making the signature, *prima facie* as a representation by him that the title recited in the document is true and will not be disputed by him as against the obligee under the document.

Their Lordships are bound to point out that that is an entire misapprehension of the law of estoppel, and that if that misapprehension be not corrected, much mischief may be done in the administration of justice in India. They think it well to recall the precise words in which estoppel is defined in the Indian Evidence Act of 1872, Section 115, which is in these terms:—

> When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true, and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

If the clear rule there laid down had been observed, the difficulties which have embarrassed this case would not have arisen. It is then said that attestation in this particular case had greater weight because of the circumstances associated with the execution of the deed. Those circumstances, when they are carefully examined, amount to this: That it is alleged that Pandurang knew of the deed's contents; that he was warned against signing it; that he said he did not mind signing it because he had no objection, and that there were circumstances from which it is possible to infer that he in fact consented to the sale. No one of these suggestions was put to Pandurang himself and their Lordships are unable to draw that inference from the other evidence. There can be no doubt that in 1910 Pandurang had obtained a formal acknowledgment of the fact that the condition under which his title to these two shares arose had in fact taken place. He must be assumed to have known that his right was then established, subject to whatever argument might be raised as

to the question of registration, which obviously was not in the mind of either of the parties. He thought that the property was worth some Rs. 4,000, it was to be sold for Rs. 9,100, and the whole of the right and interest that arose to him by virtue of the fact that the Rs. 533 that were owing to him had not been paid was to disappear; he was to get nothing whatever out of it, and he was to relinquish the right to which the non-payment of the monies had given rise. It seems to their Lordships impossible to think that in such circumstances a man could have attested a deed for the purpose of relinquishing for no consideration whatever a right which, upon the face of the document, would have been one of great value. Their Lordships do not think that the evidence that Pandurang knew of the contents of this deed and attested for the purpose of evidencing his consent can be accepted, and the burden of establishing that contention lay upon the plaintiff. If in fact there be a practice, as is suggested from the evidence, that when the consent of parties to transactions is required, it can be obtained by inducing them by one means or another, to attest a signature of the executing parties, the sooner that practice is discontinued the better it will be for the straightforward dealing essential in all business matters.

Their Lordships therefore think that this estoppel has not been made out, and for the reasons already given they think that this appeal ought to be allowed. The judgment in the Court of the Judicial Commissioner should be reversed and the suit dismissed with costs, the appellant to have his costs of this appeal and in the Courts below, and they will humbly advise His Majesty to this effect.

In the Privy Council.

PANDURANG KRISHANAJI

v.

MARKANDEYA TUKARAM AND OTHERS.

DELIVERED BY LORD BUCKMASTER.

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