Privy Council Appeal No. 60 *of* 1922.

Musammat Lajwanti and others - - - - - - *Appellants*

v.

Safa Chand, since deceased, and others - - - - - *Respondents*

FROM

THE CHIEF COURT OF THE PUNJAB.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL UPON PETITION FOR AMENDMENT OF ORDER IN COUNCIL DETERMINING THIS APPEAL, DELIVERED THE 19TH MARCH, 1925.

Present at the Hearing :

LORD DUNEDIN.
LORD SHAW.
SIR JOHN EDGE.

[*Delivered by* LORD DUNEDIN.]

This petition is presented under somewhat peculiar and unsatisfactory circumstances. In the recent appeal of Musammat Lajwanti, and others, judgment was pronounced in which their Lordships said that they would humbly advise His Majesty to allow the appeal and pronounce judgment in favour of the plaintiff. That by the expression "plaintiff," their Lordships designated Musammat Lajwanti alone without the addition of the other appellants, is made perfectly clear not only by the use of the singular and not the plural, but also by a sentence in the judgment in which their Lordships, after narrating the claim and suit of the Musammat, added, "Certain persons who might have been respondents backed up the plaintiff and were added as plaintiffs, a very unnecessary proceeding, as no decree could pass in their favour." No representation was made to their Lordships as to there being any error in this.

On the judgment being presented to His Majesty in Council for embodiment in the formal order, the word "appellants" in the

plural was used. The plaintiff and appellant, Musammat Lajwanti, now presents this petition to have the order made rescinded and an order pronounced in favour of herself alone. Now in ordinary circumstances this petition would be granted as a matter of course. It is the duty of their Lordships to see that the order which His Majesty makes in Council faithfully represents the advice which in the judgment they have said they would humbly tender to him.

But the petition is opposed by the other appellants. The counsel who at the hearing pleaded the case of the Musammat now appears for these other appellants and points out that the Musammat herself in her original pleading had set forth that by arrangement between her and three other appellants she was to take only three-fifths of all she recovered, the other two-fifths going to them; and it is further alleged that the Musammat herself has not authorised this petition. An affidavit is presented to that effect. It is met by counter affidavits.

Their Lordships disregard the affidavits on both sides. They are quite contradictory and it is impossible to determine what the truth is.

Their Lordships have no doubt that the prayer of the petition must be granted in so far as it prays to have the Order in Council made to conform to the judgment pronounced. Even had the facts now brought forward been clearly set before their Lordships, it would not follow that the judgment would have been altered. It is out of the question that persons who assert that they have a derivative interest in the stake of a suit can, by getting added as plaintiffs, be associated in a decree in favour of the person who has the only real title. The respondents have an interest in this as well as the plaintiff. At least it is safe to say that no decree would have been granted in favour of all the appellants jointly unless there had either been a consent signified by the respondents or a legal conveyance or assignment, produced by the real plaintiff of a share of the subjects of the suit.

At the same time their Lordships wish to do justice and not to allow anyone to take advantage of a slip in order to appropriate to himself property that is not fairly his. Their Lordships will therefore humbly advise His Majesty to rescind the order complained of and to pronounce judgment in favour of the plaintiff Musammat Lajwanti alone, but with the addition that this judgment is to be without prejudice to the appellants other than Lajwanti to recover in respect of any conveyance or assignment made or of any contract to convey or assign, such share of the property recovered under the judgment as may appertain to them in respect of such conveyance, assignment or contract.

As their Lordships think that both parties were in fault, there will be no costs of the petition.

In the Privy Council.

MUSAMMAT LAJWANTI AND OTHERS

v.

SAFA CHAND, SINCE DECEASED, AND OTHERS.

DELIVERED BY LORD DUNEDIN.

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