Privy Council Appeal No. 7 of 1932.

S. T. Nagappa Chettiar *alias* Chokkalinga Chettiar - - - *Appellant*

v.

Brahadambal Ammani Rajayee Sahiba and another - - *Respondents*

Brahadambal Ammani Rajayee Sahiba and another - - *Appellants*

v.

S. T. Nagappa Chettiar *alias* Chokkalinga Chettiar - - - *Respondents*

(*Consolidated Appeals.*)

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 21ST JANUARY, 1935.

Present at the Hearing:

LORD BLANESBURGH.
LORD THANKERTON.
SIR LANCELOT SANDERSON.

[*Delivered by* LORD BLANESBURGH.]

This is an appeal and a cross-appeal from a final judgment and decree dated the 10th April, 1928, of the High Court of Judicature at Madras, modifying a judgment and a decree dated the 17th September, 1923, of the District Judge of West Tanjore.

The appeals, like the suit out of which they proceed, are concerned with the validity of a sale to the appellant by the late zamindar of Kollakottai of 14 out of a total of 17 villages comprising that zamindari. The facts, in detail somewhat complicated, can be summarised with comparative brevity.

The late zamindar, Vijia Ragunatha Tirumalai Dorai Raja succeeded his father in the zamindari in 1891. He was then scarcely eighteen years of age. He was brought up and educated in Pudukottai in the house of his maternal grand-

mother, the senior Rani. He died in 1914, leaving his widow, the first respondent, surviving him with authority to adopt a son.

By deed of adoption, dated the 31st May, 1922, while the present suit was pending the widow adopted the second respondent as the son of her late husband.

This adoption deed was, in these proceedings, challenged by the appellant, both in the District Court and in the High Court, but it was upheld by both Courts, and its validity has not been further questioned before the Board. The right of the second respondent—co-plaintiff by amendment in the District Court—to question the validity of the impeached sale deed is now fully acknowledged.

Before going further, it is convenient to refer to the quality and character of the zamindari in question.

It is amongst the estates included in the schedule to the Impartible Estates Act II, 1904, and, certainly since the commencement of that Act, the zamindari has been an impartible estate. Whether it had not always been such and inalienable by the custom of the family, the learned District Judge expressed himself unable, on the evidence before him, to decide. Their Lordships are in like case. The subject was not canvassed before them. They proceed, accordingly, upon the footing that it has not in this suit been established that the quality of impartibility attached to the estate prior to the commencement of the Act, sections 4 and 7 of which may not inconveniently be here detailed.

> "4. (1) The proprietor of an impartible estate shall be incapable of alienating or binding by his debts, such estate or any part thereof beyond his own lifetime unless the alienation shall be made, or the debt incurred, under circumstances which would entitle the managing member of a joint Hindu family, not being the father or grandfather of the other co-parceners to make an alienation of the joint property, or incur a debt, binding on the shares of the other co-parceners independently of their consent."

This section is subject to section 7, which enacts "that the Act shall not affect alienations made or debts incurred before the coming into force of this Act." In other words, these debts remain in a favoured position. The relevance of this fact in the present case will presently appear.

The history of the late zamindar in relation to his estate was unfortunate. Very early in his career two Natthukottai Chetties, S. A. Sellappa, and C. A. Nagappa turned his extravagance and weakness to their own ends. On the 13th February, 1896, in consideration of an advance of Rs. 80,000, the zamindar executed in favour of these Chetties a usufructuary mortgage comprising his entire zamindari, with a trifling reservation. Under that deed, the mortgagees were empowered to take and remain in possession of the mortgaged property for a term of 28 years, that is, until the 30th June, 1924, paying to the zamindar during that term a monthly allowance of Rs. 450 and no more.

On the expiration of the term, but not before, the loan with all interest thereon, was to be deemed to be extinguished.

In January, 1898, S. A. Nagappa Chetty assigned his interest in the usufractuary mortgage to Sellappa, who thereafter, on his own account, entered into further mortgage transactions with the zamindar. On the 6th June, 1898, he lent him a sum of Rs. 20,000 at 12 per cent. per annum compound interest with annual rests secured by hypothecation as well of the land excluded from the usufructuary mortgage as of the mortgagor's reversionary rights thereunder. On the 29th November, 1900, he advanced to the zamindar a further sum of Rs. 16,000 carrying the same rate of interest. The purpose of this advance by Sellappa was to enable the late zamindar to discharge the interest to that date due to Sellappa himself on the hypothecation of the 6th June, 1898, and some other debts of his. This advance was secured by the hypothecation of some property still possessed by the zamindar, who, on the same day, executed another deed in favour of Sellappa, whereby he agreed to the deduction by him every month of Rs. 200 from the monthly allowance payable to the zamindar under the usufructuary mortgage as already mentioned, and on the 26th February, 1908, a further Rs. 100 of that monthly allowance was commuted for a payment of Rs. 6,600 by Sellappa's son.

The late zamindar was still in early manhood when the latest of these incumbrances was created, and they may or may not tell their own tale. It is well to note, however, that in these proceedings their validity as against the estate is not in question, and all of them were created, as will have been seen, long prior to the passing of the Impartible Estates Act. They are therefore made the foundation and justification of the sale deed now sought to be impeached, and in these proceedings any question as to its validity must be determined on the footing whether well founded or not, that at its date these remained subsisting charges for the amounts still unpaid in respect of them. In these circumstances, it is doubtful whether the recklessness extravagance and immorality of the late zamindar, of which so much was made below, are directly relevant to any issue in this suit except that of the appellant's bona fides in carrying out as he did the purchase here in question. In that regard, the record of the zamindar may have some bearing, because of the appellant's sworn statement that the weaknesses of the zamindar were unknown to him, a statement which the learned District Judge did not believe. The appellant, he says, "pretends ignorance of the ways of the late zamindar. But it is idle to believe his statement because he lives in the Pudakottai State and the late zamindar was a permanent resident in Pudakottai."

By 1913, the year of the transaction now impeached the financial difficulties of the zamindar had become grave, indeed, they had doubtless been becoming increasingly serious year by

year. Practically his entire zamindary was the subject of the usufructuary mortgage with, in 1913, 11½ years of the mortgagees' possession still unexpired. His monthly allowance thereunder—always probably inadequate for his needs—had been greatly reduced, while the advances secured by the hypothecation of 1900 had by the accumulation of interest reached an amount almost portentous. It was with full knowledge of the position—their Lordships accept the finding of the learned District Judge on this point—that the appellant, " a shrewd calculating money lender," as the learned Judge describes him, became the purchaser under the sale deed now in question.

It is a cunningly phrased document, containing a record of the zamindar's life in relation to his estates which is little better than a travesty of the real facts. The deed, too, is drawn so as, in the well authenticated opinion of the learned District Judge, to bring it within section 7 of the Impartible Estates Act already quoted. It is dated the 22nd January, 1913. It recites the usufructuary mortgage; the hypothecation of the 6th June, 1898, and the hypothecation of the 29th November, 1900. " These debts," the zamindar narrates: " are old debts contracted by me and my ancestors for the benefit of the Zamin." It then recites that on the hypothecation of the 6th June, 1898, the principal of Rs. 20,000 is still due; that the sum of Rs. 63,457-12, inclusive of principal and interest to date, remains owing on the hypothecation of the 29th November, 1900; that the villages are in possession of the usufructuary mortgagee; that Rs. 300 of the monthly allowance of Rs. 450 is being credited towards interest on the hypothecation of the 6th June, 1898; that on account of these, the narrative goes on: " I feel difficulty in maintaining myself, and although I have been making great endeavours at great pains for the last 2 or 3 years to discharge the said debts and to redeem the said Zamin or any portion thereof I have not found it possible but the debts are increasing more and more. . . I am anxious to save at least a portion of the Zamin without allowing it to be swallowed in its entirety by way of prudent management in respect of the said Zamin."

And the operative clause, with omissions presently immaterial, is as follows:—

> " 9. Under these circumstances considering the interest, the present condition, future gain prospects, etc., I having pressed you [the Appellant] for the same . . . execute an absolute sale deed of the 14 villages out of the 17 villages of the said Zamin . . . and the consideration received is Rs. 84,257–12. . . . Rs. 20,000 by way of assignment to discharge the said Rs. 20,000 hypothecation bond . . . Rs. 63,457–12 by way of your being assigned to pay the principal and interest . . . of the aforesaid Rs. 16,000 hypothecation bond . . . Rs. 800 by way of your being assigned to pay to Selappa 'towards the usufructuary mortgage deed for Rs. 1,400 executed solely by me . . . on the security of the Jeevitham lands of the said villages. As the sum of Rs. 84,257–12 has been received by me according to the three items above you may possess and enjoy the properties mentioned . . . from son to son . . . as long as the sun and moon last and according to the usual recitals in a sale deed."

The purchase price, it will be noted, was to the last pie needed to discharge the three debts unaffected by the Impartible Estates Act. Could it be that the value of the villages sold corresponded to the purchase price with the same meticulous exactness? A very natural scepticism on this point is, on inquiry, justified by the fact, to which no reference whatever is made in the sale deed, that on the same day the appellant paid to the zamindar a further sum of Rs. 25,000. This payment was alleged and sworn by the appellant to be an independent transaction of loan to the zamindar, but it has been held by both Courts in this suit, as well as in a previous suit in India against the appellant to have been part of the purchase price. All reference to it, their Lordships cannot doubt, was deliberately and for interested reasons omitted from the sale deed.

There was a great conflict at the hearing as to the actual value of the properties sold; the learned District Judge being of opinion that, in possession, they were worth at least 3½ lakhs. It was enough for him, however, to hold, as he did, that in reversion, accepting for that purpose the opinion of the appellant himself, who paid that price for them, they were worth at least Rs. 1,10,000.

In these circumstances the learned Judge found that the sale was not valid beyond the lifetime of the late zamindar, but inasmuch as a sum which he fixed at Rs. 85,000 went to discharge incumbrances made prior to the passing of the Act II of 1904, he held that the appellant ought to have paid to him Rs. 85,000 with simple interest at the rate of 9 per cent. per annum. And he passed a decree accordingly.

From that decree the appellant appealed to the High Court. Except that the learned Judges there were more impressed than had been the learned District Judge with the necessity for some sale of the property in 1913 by reason of the critical situation at that date, their findings of fact did not materially differ from those of the learned District Judge. With him they were satisfied that the Rs. 25,000 was not a loan to the zamindar, but a part of the purchase price: the appellant's case that it was a loan was manifestly false. But on the question of value, being of opinion that Rs. 1,10,000 was as near the price as it was possible to get, and being impressed, as they obviously were, by the fact that in 1913 some sale of the estates was essential if all was not to be soon lost, the learned Judges on the 16th November, 1926, remanded the case to the District Court for a finding as to how many of the 14 villages, if sold, would have properly fetched the price of Rs. 85,000 in 1913, taking their total value to be Rs. 1,10,000 and bearing in mind that the price to be taken was the price of the property burdened by the usufructuary mortgage with over 11 years still to run. The District Judge was also to find what villages ought to be included to make up the Rs. 85,000 paid by the appellant. A decree would then be given by the High

Court, declaring the sale of these villages to the appellant to be valid and binding on the estate.

This remand by the learned Judges was made without consent asked for or given by the parties or either of them—the valuation of the properties at Rs. 1,10,000 being specially objected to by the respondents as inadequate. Both parties now repudiate its order of remand as one beyond the power of the Court. On the remand, the learned District Judge appointed a Commissioner to inspect and take evidence of the value of the villages and report thereon. After 40 sittings and the examination of 20 witnesses, the Commissioner on the 15th July, 1927, made a return reporting that the sale of nine villages would be sufficient, and giving alternative lists of five villages which in his opinion might be excluded from the sale. On the 1st of August, 1927, the District Judge accepted the finding of the Commissioner and found that the villages to be sold ought to be determined by giving the respondents the choice between the alternative lists of villages which the Commissioner had suggested might be excluded.

The High Court, on this return, delivered their final judgment on the 10th April, 1928, awarding to the respondents the first group of five villages, and a formal decree to that effect was made from which both parties now appeal: the appellant claiming that the suit against him be dismissed; the respondents asking that the order and decree of the District Judge be restored.

Their Lordships, accepting on this point, the views of both sides, are of opinion that the remand made by the High Court and the order following upon the report of the District Judge were beyond the competence of the High Court. That Court had no jurisdiction to make a new bargain between the parties to the sale, to split the parcels, and to compel the appellant to accept nine villages arbitrarily assigned to him for Rs. 85,000, or any other sum. In their Lordships' judgment the order of the High Court cannot stand. The very limited powers of the Court in such matters are defined in the decision of the Board in *Kam Sunder Lal* v. *Lachmi Narain* 57 Madras L.J.7.

On the final question thus brought into issue, interesting points were raised with reference to the true effect of the Act of 1904, but with these their Lordships do not deem it necessary to deal in this case. In the view which they take of its facts, they think it clear that, whether under or apart from the Act, the deed of sale is one which, as against the respondents, cannot be allowed to stand. If the appellant is held bound to the assertion of the deed that the purchase price thereunder was Rs. 84,000 odd and no more, then the 14 villages were sold at a gross undervalue: if, on the other hand, the sale was for a price of approximately Rs. 1,10,000, then properties of a value of at the very least Rs. 25,000 in excess of the limit required by necessity were included in the sale. But

beyond and above these considerations, the deed was not one to which, upon the facts, any judicial favour can be extended. It was tricky and misleading: craftily framed so as by a misstatement of the purchase price actually paid to make it appear to be regular and warranted by the Act. It was so expressed as to enable the late zamindar, without disclosure of the fact, to receive and squander, if so minded, a sum of Rs. 25,000 in excess of his legitimate necessities. The appellant either knew, or was careful not to inquire, how that sum was to be applied, and their Lordships cannot doubt that he was fully aware of, to say the least, the possibility that in whole or in part, it would be squandered in dissipation, or some other non-family purpose, as in fact it appears to have been. In such circumstances, the sale deed cannot stand, and the only remaining point to be settled is the adjustment of the equities resulting from its cancellation.

These must not, in this case, exceed the limits set by law; they would cease to be equities if they did. The learned District Judge, in making it a condition of his order setting aside the sale, that the respondents should pay to the appellant his Rs. 85,000, with simple interest at the rate of 9 per cent. per annum, has, their Lordships think, done justice between the parties. They will go no further.

Accordingly, in their judgment, the appeal should be dismissed: and the cross-appeal allowed, the judgment and decree of the High Court being discharged and the judgment and decree of the District Judge restored. And their Lordships will humbly advise His Majesty accordingly.

The main appellant must pay to the respondents their costs of the appeal to the High Court and of these appeals, with the exception of the costs of the order of remand of the High Court of the 16th November, 1926, and of the proceedings thereon. These costs were incurred by the parties under a common misfortune. It seems just that they should each bear their own, any payment made in respect of them by one party to the other being refunded.

In the Privy Council.

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