Privy Council Appeal No. 74 of 1944

Raja of Venkatagiri - - - - - - - - *Appellant*

v.

Raja Rao Sri Krishnayya Rao Bahadur, Zamindar - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 18TH MARCH, 1948

Present at the Hearing :

LORD SIMONDS
LORD MORTON OF HENRYTON
SIR MADHAVAN NAIR

[*Delivered by* SIR MADHAVAN NAIR]

This is an appeal by special leave from a judgment and decree dated 3rd March, 1941, of the High Court of Judicature at Madras, which in its appellate jurisdiction, affirmed a judgment and decree dated 27th April, 1939, of the same High Court in its original jurisdiction.

The appeal arises out of a suit instituted by the first plaintiff to enforce payment of money due under a promissory note dated 29th March, 1933, executed by the respondent in his favour for Rs.150,000 which with interest amounted to Rs.158,725 at the time of the suit. By this instrument the respondent promised to pay on demand a sum of Rs.150,000 with interest at 2 per cent. per annum, " in consideration of the amounts advanced from time to time for the Gollaprole litigation."

The only question for decision in the appeal is whether the promissory note is supported by " consideration." The High Court in its original jurisdiction as well as on appeal answered the question in the negative. The question was considered by the Court in the light of Section 2, cl. (*d*) and 25 Sub-section 2, of the Indian Contract Act (Act IX of 1872).

Section 2, cl. (*d*), of the Contract Act in so far as it is material is as follows:—

> " When at the desire of the promisor the promisee or any other person has done or abstained from doing or does or abstains from doing, or promises to do or abstain from doing, something, such act or abstinence or promise is called a consideration for the promise."

Section 25, sub-section 2, is as follows:—

> An agreement made without consideration is void unless:—
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> * * * * *
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> * * * * *
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> (2) " it is a promise to compensate wholly or in part, a person who has already voluntarily done something for the promisor or something which the promisor was legally compellable to do "

Before stating the facts of the case, it will be advantageous to explain the relationship of the parties to the appeal, and also to summarise the events which have a bearing on the Gollaprole litigation, and the execution of the promissory note. These events date back as far as 1869. The following two pedigree tables will serve to illustrate the relationship of the parties to the appeal.

Venkatagiri.

Kumara Yachendra Bahadur.

Raja Gopala Krishna.	Ramakrishna (adopted by Raja of Pittapur).
Govinda Krishna (1st Plaintiff).	Sri Krishnayya, adopted by Ramayyamma.
Kumara Raja (2nd Plaintiff and present Raja of Venkatagiri).	

Pittapur.

Surya Rao.

Gangadhara Rama Rao (late Raja of Pittapur) died in 1890.	Venkata Rao (died in 1871). = Venkayamma (died in 1889). = Ramayyamma (died 24th Oct., 1923).
Adopted son Ramakrishna Rao (died April, 1914).	Adopted son Sri Krishnayya (Defendant).

(N.B.—Only portions of the pedigree tables necessary for this appeal are given above.)

The appellant before the Board is the second plaintiff, the present Maharajah of Venkatagiri who succeeded to the Zemindari on the death of his father the first plaintiff, the late Maharajah, and was brought on record as his representative, in accordance with an order of the Court dated 3rd December, 1937.

The respondent is the defendant, the Zemindar of Gollaprole. He is the fourth son of Ramakrishna who was the natural brother of the first plaintiff's father Raja Gopala Krishna, and was a member of the Venkatagiri family. He had been adopted by the then Raja of Pittapur, Gangadhara Rama Rao, who had in 1869 transferred to his only brother Venkata Rao the estate known as Gollaprole which formed part of the Pittapur Zemindari. Venkata Rao died childless in 1871. He was survived by two widows, Venkayamma, who died in 1889, and Ramayamma who died on 24th October, 1923. Ramayamma belonged to Vundur; she and the members of her family have been referred to in the case as " Vundur people ".

Gangadhara Rao died in 1890, leaving behind him Ramakrishna, the adopted son, and the present Maharajah who was born after the adoption of Ramakrishna, and to whom he had willed the estate of Pittapur.

In 1891, litigation began between Ramakrishna and the Maharajah respecting the Pittapur estate in which Ramakrishna questioned the legitimacy of the Maharajah. The Privy Council before which the case came ultimately, declared that the Maharajah of Pittapur was entitled to the estate under the late Raja's will. The question of legitimacy was not determined. (*Sri Raja Rao Venkatasurya Mahipathi Ramakrishna Rao Bahadur* v. *Court of Wards and Venkata Kumar Mahipathi Suryarao* (1898-99) L.R. 26 I.A.83.)

In 1914, it was proposed that Ramayamma, the then sole surviving widow of Venkata Rao, and who was in possession and enjoyment of the Gollaprole estate, as his widow, should adopt the respondent (the fourth son of Ramakrishna), who was then aged 21 or so. As in a previous litigation Ramayamma had failed to show that her husband had given her authority to make an adoption, she sought the permission of her deceased husband's nearest Sapindas to adopt the respondent. At the date of the adoption the nearest reversioners of her husband were Ramakrishna, and the Maharaja of Pittapur.

On 27th January, 1914, she wrote to Ramakrishna asking him to consent to the adoption of the respondent. Before giving his consent Ramakrishna consulted the father of the first plaintiff, his elder brother, the then Maharajah of Venkatagiri. In the letter to Ramayamma giving his consent dated 30th January, 1914, Ramakrishna stated " . . . I have considered over it and obtained the advice of my elder brother . . . I hereby give you my consent to take my son Krishnayya in adoption ".

On the 29th January, 1914, i.e., the day previous to the above mentioned letter, Raja Gopala Krishna wrote to Ramakrishna a letter in which he said:

> " Whether it be at the time of the issue of the notice by Vundur Ramayamma Garu to the Raja of Pittapuram informing him that she is taking your fourth son Sri Sri Krishnayya in adoption, and asking him for his consent, or whether it be after the adoption, if the Raja Garu of Pittapuram were to file a suit against you in respect of the said adoption, and if either you or the said adopted boy should have to spend money in filing answer, etc. (written statement, etc.), we are ready to bear the said expenses. If on taking the advice of two vakils we ask you to remain ex parte you have to do so. If Vundur Ramayamma Garu does not advance moneys for the expenses of the case we shall without fail advance for expenses and have case conducted without fail ".

To what extent the undertaking given in this letter is binding on the Venkatagiri family is the main theme of the appellant's argument in the appeal.

The Maharajah of Pittapur refused his consent to the adoption, but despite his refusal, the adoption took place on 15th February, 1914. Two months later, Ramakrishna died.

As a result of the adoption the respondent became entitled to the Gollaprole estate. On the day following the adoption, he conveyed half of the estate of Gollaprole to his adoptive mother and gave her also a monthly allowance of Rs.500 for her maintenance. Ramayamma was heavily indebted at the time.

On 25th July, 1914, Ramayamma, one of her two brothers and a son of the deceased brother executed a mortgage for Rs.2,50,000 in favour of the father of the first plaintiff for payment of debts of the mortgagors. The mortgage included Ramayamma's half share of the Gollaprole estate. By a second mortgage dated 25th September, 1920, a further sum of Rs.1,78,596-4-6 was borrowed by the mortgagors from the same mortgagee.

On 17th August, 1915, the Maraharajah of Pittapur instituted in the Court of the Subordinate Judge of Cocanada C.S. 55 of 1915 against Ramayamma and the respondent as defendants, disputing the validity of the adoption, as it was made without securing his consent. The suit was transferred as O.S. 34 of 1919 to the District Court of Rajamundry. The respondent and his adoptive mother pleaded that the Maharajah was not the son of the late Raja and as such was not a Sapinda whose consent was necessary for the adoption. They also stated that if his consent was found necessary it was improperly refused by him and the consent of Ramakrishna alone was sufficient to validate the adoption. Thus began the Gollaprole litigation which as will be shown below continued until July, 1935, when the respondent's adoption was upheld by the Privy Council. It was in the course of this litigation that the suit promissory note was executed by the respondent.

In 1920, the District Judge held that the Maharajah of Pittapur was the son of Gandadhara Rama Rao and that the respondent's adoption was invalid. On appeal to the High Court by the defendants, the learned Judges of the Bench who heard the appeal agreed that the Raja was the son of Gandadhara Rama Rao, but differed on the validity of the adoption. As a result of this disagreement, there was a Letters Patent Appeal to the High Court which was heard by three learned Judges two of whom held the adoption to be invalid while the third held that it was valid. The majority view prevailed, and the adoption was held invalid. (*Krishnayya Rao* v. *Raja of Pittapur* Ind. L.R. 51 Mad. 893). The Letters Patent Appeal was decided on 7th March, 1928.

Ramayamma had died in 1923. The respondent and Prakasa Rao to whom she had left her half share of the Gollaprole estate appealed to the Privy Council in 1929-30, against the decision of the High Court. They also contended that certain evidence relating to the parentage of the Maharajah was wrongly excluded. The Privy Council accepted this contention and remanded the case to the High Court for further hearing. (*Krishnayya Rao* v. *Raja of Pittapur* (1933) L.R. 60 I.A. 336.) The case was then heard by three learned Judges who agreed that the evidence established that the Maharajah was the legitimate son of Gangadhara Rama Rao. The Privy Council accepted this finding, but held that the adoption of the respondent was valid, and that the refusal of his consent by the Maharajah was unjustified and could be disregarded (*Krishnayya Rao* v. *The Raja of Pittapur* (1935), 69 Mad. L.J. 388). In consequence, the suit of the Maharajah was dismissed with the result that at long last the respondent after 20 years of litigation secured his share of the Gollaprole estate.

On 23rd July, 1916, the father of the first plaintiff who had agreed to finance the Gollaprole litigation died. On 26th January, 1916, he noted on the back of a letter dated 20th January, 1916, written to him by P. V. Krishnaswama Chattey High Court vakil asking for funds to defend the adoption suit, a memorandum stating . . . " as per their written promise Vundur Varu must bear the expenses ". Apparently there seems to have been an arrangement with Ramayamma about the expenses of the litigation. In this memorandum he referred to the adoption case " . . . which is the result of our folly ". He however went on meeting the expenses of the litigation until his death.

On 24th April, 1918, i.e., about two years after his father's death the first plaintiff wrote to the respondent asking for the letter given to his father Ramakrishna, on 29th January, 1914, and the respondent sent it to him. There was nothing to show that the first plaintiff was unwilling to meet the expenses of the litigation, until 4th May, 1928. On that date, the Venkatagiri cashier wrote to the respondent stating that the estate would only pay Rs.4,000, towards the decree (costs) and that " . . . as the Vundur people are also partners in the case you and they should confer and pay the balance. Their half they should themselves without fail bear. All these must be talked over between you alone. . . ." On 16th August, 1928, the treasury officer wrote another letter which shows that the first plaintiff's attitude was what was intimated by the treasury officer in his previous letter.

It will be remembered that an appeal had been filed against the decision of the High Court before the Privy Council. When the appellant was pressed to provide the funds for prosecuting this appeal the respondent was summoned to Madras where he was called upon by the appellant to execute the suit promissory note. On the same day that the promissory note was executed by the respondent the first plaintiff wrote to him the following letter:—

> " I received your promissory note of even date for rupees one lakh and fifty thousand (Rs.1,50,000) only which you executed for amounts advanced by me from time to time for the expenses of the Gollaprole litigation. If the Gollaprole suit is decided against you in the Privy Council I shall not enforce your liability under the said pro-note."

It is not disputed that the expenses for the Gollaprole litigation were furnished by the appellant, and his predecessors. When demand was made for the money mentioned in the note after the successful termination of the appeal, the respondent denied his liability to pay by raising various contentions only one of which falls to be decided by the Board, viz., that relating to " consideration." The respondent alleged that the suit note was void for want of consideration, as according to him the moneys were advanced to him, not as a loan, but in fulfilment of the promise made by appellant's grandfather to his father Ramakrishna by his letter dated the 29th January, 1914, already referred to.

On the above contention the learned Trial Judge held that though moneys had been advanced to the respondent there was no " consideration " in law for the promissory note as the respondent had not brought himself either under Section 2, cl. (*d*), or under Section 25, sub-section (2), of the Indian Contract Act. In his view, the advances made by the Maharajah and his successors were not made at " the desire " of the respondent but were made in pursuance of the undertaking given by the first plaintiff's father to the father of the respondent.

On appeal, the learned Judges concurred with the above view and expressed their finding as follows:—

> " . . . the learned Judge has held that no request was ever made by the respondent himself for money. Here the learned judge undoubtedly meant that the respondent had made no request which was not based on Raja Gopala Krishna's undertaking to finance the litigation if called upon and we concur in this finding. . . ."
>
> " No doubt the respondent from time to time called upon the appellant to meet the expenses of the litigation but this would not make him liable for repayment. The respondent's natural father gave his consent to the adoption of the respondent by Ramayamma only because Raja Gopala Krishna had agreed to finance the litigation, if Ramayamma failed to do so. Therefore Raja Gopala Krishna was under an obligation to provide the necessary money when called upon. In agreement with the finding of the learned Trial Judge we hold that the advances were not made as the result of the importunity of the respondent, but because of the undertaking given by the then head of the Venkatagiri family to finance the litigation in case of need and considerations of self interest, namely, the desire to safeguard the security given for the advances made to Ramayamma and her brothers. Because the necessity for further advances may have been impressed on the respective heads of the Venkatagiri family by the respondent from time to time it does not necessarily mean that the advances became loans made by the lenders at " the desire " of the respondent within the meaning of Section 2 (*d*) of the Contract Act. In making requests for money the respondent was demanding what he considered he had a right to demand and at no time did he ask for money as a matter of grace."

Referring to Section 25, sub-section (2), of the Indian Contract Act which was relied on by the appellant the learned judges held " that in signing the promissory note in suit the respondent was not promising to compensate the first plaintiff for something which had been done for him voluntarily " and therefore the Section did not apply to the facts of the case. This was the opinion of the Trial Judge also.

The main argument before the Board elaborately urged by Counsel for the appellant was that the learned Judges of the Courts in India have misconceived the effect of the letter of the 29th January, 1914, and erred in thinking that it created a legal enforceable obligation on the writer of the letter and his successors to finance gratuitously the respondent in the litigation between him and the Raja of Pittapur in all its stages. It was urged that the promissory note is prima facie supported by consideration, that the sum mentioned in it consisted of advances made from time to time at the request of the respondent, and that the undertaking contained in the letter of the 29th January, 1914, which it is said made it obligatory on the appellant to advance the money, is not supported by consideration and is not therefore binding on the appellant.

As the entire case, as conceded by the Counsel on both sides, very largely hinged on the letter of 29th January, 1914, it is necessary that its scope and implications should be examined. It appears to their Lordships that its significance and binding character can be properly understood only if it is examined in relation to the events of the Gollaprole litigation which form its background, and the interest which the Maharaja of Venkatagiri had in that litigation.

The great object of the plaintiff in that litigation was to have it declared that the adoption of this respondent was invalid. The father of the first plaintiff was vitally interested in supporting its validity. The respondent was given in adoption only after Ramakrishna had taken his advice and secured his support. On 27th January, 1914, Ramayamma asked Ramakrishna's permission to adopt the respondent. Ramakrishna feared, as he had questioned the legitimacy of the Maharaja (the plaintiff in the Gollaprole suit) in a previous suit, that the adoption would land him and his son in litigation—as it afterwards really did; he naturally solicited the advice of his powerful relation, the father of the first plaintiff, who assured him his support by writing to him on 29th January, 1914, the letter now under discussion. On 30th January, Ramakrishna wrote to Ramayamma giving his consent and stating in the letter " I have considered over it and obtained the advice of my elder brother the Maharaja ". Soon after, on 15th February, the adoption took place. It is clear that Ramakrishna would have never consented to give his son in adoption had it not been for the promised support of the Maharaja of Venkatagiri. If a suit were filed by the Maharaja of Pittapur in respect of the adoption the Maharaja of Venkatagiri was bound to support the respondent as promised in the letter of 29th January, 1914. Though Ramakrishna was no longer legally a member of the Venkatagiri family, he was born a member of that family and was the Maharaja's brother. The adoption would make his nephew an independent Zemindar in his own right as Gollaprole would ultimately become his after the adoption. Natural love and affection towards his relations and desire to extend the influence of his family must have weighed with the Maharajah when he advised Ramakrishna to give his consent and promised him to support. Facts show that other thoughts also must have been at work in his mind. As already stated, after obtaining for herself half of the Gollaprole Estate from the respondent, after his adoption Ramayamma and her relations executed on 25th July, 1914, a mortgage of that estate to the first plaintiff to secure a loan of Rs.2,50,000. The mortgage deed stated:

> " For clearing the debts due by us to others, we have hypothecated to you the immoveable property scheduled hereunder and belonging to us and have borrowed from you Rs.2,50,000 (Rs. two lakhs and fifty thousand in words). As we owe you the said amount, we shall pay the same with interest accruing thereon at 4 per cent. (four rupees) per hundred per annum as per instalments hereunder."

It is said that the language of the document connotes a contemporaneous advance of money and not a previous advance, but it is not stated that the loan was advanced that day, and as the learned judges of the High Court, who had also the advantage of examining the document, say, the language is not inconsistent with an earlier advance. Between 25th July, 1914, and 28th September, 1920, the Venkatagiri family advanced further sums to Ramayamma and her relations which were secured by another mortgage on the same property for Rs.1,78,596-4-6. In the circumstances, the opinion of the High Court " that there are grounds for the suggestion that in writing the letter of 29th January, 1914, Raja Gopala Krishna had in mind a scheme for securing for himself in respect of moneys advanced or to be advanced to Ramayamma and her brothers " cannot be said to be far-fetched or unwarranted. It was only by supporting the adoption questioned in the Gollaprole suit that the safety of the security for the advances of money made to Ramayamma could be secured. Litigation may be risky in its results, but it is easy to see that if the adoption suit was not defended through all its stages and brought to a successful end, there was serious risk of loss of money to the Venkatagiri family. Apart from these considerations which would

give the letter its binding character, the letter shows on the face of it " consideration " when it states that if a suit in respect of the adoption were instituted the Maharaja would advance expenses and " have the case conducted without fail ". When the suit questioning the adoption was filed, the obligation on the part of the Maharaja to perform his part of the promise to have the case conducted by advancing money became imperative. In this connection the significance of the conduct of the Venkatagiri family should not be overlooked. It is not disputed that the funds required for the litigation were all supplied by the appellant, his father and grandfather. From the commencement of the litigation in 1915, till the 4th May, 1928, the Venkatagiri Samasthanam seems to have advanced funds without objection, apparently realising the binding nature of the promise contained in the letter of 29th January. At that date, the position was that a few months before, on 7th March, the High Court had held in the L.P. Appeal that the adoption was invalid. The Venkatagiri Samasthanam then began to take up the attitude that their liability was limited as may be seen from the letters of the treasurer; even then, it was not directly stated in the letters that the respondent was responsible for the expenses. The letter of 4th May, 1928, only stated that " Vundur people " should pay their half of the expenses. When the appeal was lost in the High Court the appellant evidently became disheartened, and wanted to get out of his liability. Even so, no document was taken from the respondent till 1933, by which time most of the amount if not all that was required for the litigation must have been advanced by the appellant. It was stated that advances of money were made even after the execution of the promissory note, but it was candidly admitted that there was no document in the case to support the statement. In their Lordships' opinion the whole conduct of the appellant and his predecessors is only consistent with the view that they must have felt that there was an obligation binding on the Venkatagiri family to finance the Gollaprole litigation from the beginning to its end. Indeed, the conduct of the appellant and his predecessors form an illuminating commentary on the binding nature of the letter of 29th January, 1914.

Their Lordships do not think that the Courts in India have misconstrued the letter of 29th January, 1914. It says in unmistakable terms " If the Raja of Pittaparam were to file a suit against you in respect of the said adoption . . . if Vundur Ramayamma Garu does not advance moneys for the expenses of the case we shall without fail advance for expenses and have case conducted without fail ". It is not the case of either party that Vundur people provided the funds necessary for the litigation. Their Lordships hold that the letter contains an unconditional undertaking on the part of the Maharaja of Venkatagiri to provide money for expenses of the case implying thereby the case in all its stages and have it conducted if Vundur Ramayya Garu does not advance moneys for the same. The word " advance " used in the letter does not connote any idea of repayment; if repayment was intended words signifying it might well have been used by the Maharaja who must be presumed to have known fully the scope of his undertaking when he wrote the letter.

It was also argued that since the suit promissory note states its " consideration " the respondent should not in law be allowed to plead that it is not supported by consideration. The argument appears to be based on a misunderstanding of the real nature of respondent's plea. When he denies liability under the note he is not to be understood as saying there is no consideration; what he says being that there is consideration but he will show that it is past consideration which, not having moved at the " desire " of the promisor, i.e., himself, does not fall within Section 2, cl. (*d*) of the Contract Act. He is not precluded from doing so by any provision or principle of law. As mentioned already, the Courts in India have concurrently found that the advances of money for the litigation were made not as the result of the importunity of the respondent but because of the undertaking given by the Maharaja of Venkatagiri to Ramakrishna which their Lordships have now held to be binding on the appellant, and that the respondent made no request which was not based on the Maharaja's undertaking to finance the litigation. No doubt

the respondent pressed the appellant to furnish the necessary funds but in doing so he was only asking him to give effect to his grandfather's undertaking contained in the letter of 29th January. Their Lordships accept these findings. The result is that it cannot be held that the advances of money were made at the " desire " of the respondent within the meaning of Section 2, cl. (*d*) of the Contract Act.

It also follows from the findings, that Section 25, cl. (2), of the Contract Act cannot be relied upon in support of the appellant's case. To invoke the aid of that provision it must be shown that there was a promise by the respondent to " compensate " the appellant or his father for something which had been already done by them " voluntarily " for him. The findings of the courts which their Lordships have accepted show that the moneys which had been advanced were not advanced to the respondent " voluntarily " but because of the undertaking given by the Maharaja of Venkatagiri at the time of the adoption. They also show that in executing the promissory note the respondent was not promising to compensate the appellant for something which had been done for him voluntarily. It follows that the said promissory note is not supported by consideration; that being so, the other contentions raised by the respondent need not be considered by the Board.

Before parting with the case their Lordships may point out that the Trial Court expresses the opinion " so it will be seen that the second plaintiff concedes that Rs.1,27,508-11-5 expenses of this litigation are secured by mortgages from the Vundur family ". These mortgages are B35 and B39. This point has not been considered by the High Court and their Lordships do not pronounce any opinion about it except saying that if it be true, the appellant has been able to secure by mortgages a considerable portion of the moneys advanced by him for the Gollaprole litigation.

The appeal fails and should be dismissed with costs. Their Lordships will humbly advise His Majesty accordingly.

(59717) Wt 8062—31 180 4/48 D.L. G. 338

In the Privy Council

RAJA OF VENKATAGIRI

v.

RAJA RAO SRI KRISHNAYYA RAO
BAHADUR, ZAMINDAR

DELIVERED BY SIR MADHAVAN NAIR

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