

Privy Council Appeal No. 94 of 1916.

Bengal Appeal No. 79 of 1913.

Rajkumar Jagannath Prashad Singh - - *Appellant,*
v.
Syed Abdullah and Others - - - *Respondents.*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

**JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 18TH MARCH, 1918.**

Present at the Hearing :

VISCOUNT HALDANE.

LORD DUNEDIN.

LORD SUMNER.

SIR JOHN EDGE.

MR. AMEER ALI.

[*Delivered by* LORD DUNEDIN.]

In this suit Syed Abdullah sues the Raja of Deo for possession of a village called Badam. The plaintiff is purchaser from a dancing girl, Rajeshwari Koer, who is the natural daughter of the late Raja Bhikham of Deo, father of the present Raja. defendant.

The history of the matter is this: Raja Bhikham having got into involved circumstances, his estate was put under management under the provisions of the Chota Nagpur Encumbered Estates Act, which had been made to apply to Deo by a special Act. The manager appointed under the Act one Bhuan Lal, who had, in terms of the Act powers of sale, put up to public auction the village of Badam. It was bought by Kashi Nath Singh for the sum of 2,000 rupees. As a matter of fact, Kashi Nath had been put forward by the Raja himself, who provided him with the money. No conveyance was executed by Bhuan Lal in favour of Kashi Nath. The management came to an end in 1896, and the Raja was restored to his estate. In 1897, the Raja, who had expressed his desire to benefit Munnī Bibi, the mother of Rajeshwari, and his infant daughter by her, caused Lajjadhari, the adopted son of Kashi Nath who had by this time died, to execute a conveyance of Badam in favour of

Rajeshwari. The deed of conveyance bore to be in respect of a consideration of 5,000 rupees, but in reality no money passed—Lajjadhari merely acted on the command of the Raja. On the 22nd April, 1898, Rajeshwari, being a minor, applied through her mother as guardian for registration and mutation of names in respect of the village of Badam. On the same day the Raja presented a petition in which he narrated the fact of Badam having been sold by Bhuan Lal, the manager, set forth that Kashi Nath had died without having obtained a conveyance and that Lajjadhari his son had sold the property to Rajeshwari, and prayed that Rajeshwari's petition should be granted and her name inserted in the register, "to which your petitioner has no objection whatever." Rajeshwari's name was accordingly entered in the Government register as proprietrix of the village of Badam.

In October 1898 Raja Bhikham died and the present Raja being a minor the estate came under the management of the Court of Wards. Sometime in 1899 Mr. Wright, the manager, turned out Rajeshwari who was in possession, *via facti* and without process. In 1901 Mr. Wright conveyed Badam to Ranee Chandra Koer, the surviving widow of Raja Bhikham, on the idea that it was *gur* property descending from Ranee to Ranee. In 1902 the Ranee applied for mutation of names. Her application was opposed by Rajeshwari and was refused. In 1904 the Ranee raised a civil suit for a declaration that the property was hers. To this suit she called as defendants Rajeshwari and the young Raja, the present defendant. The whole facts were gone into. The Ranee had based her case on an allegation that Kashi Nath was a *benamidar* for her. The Subordinate Judge held that Kashi Nath was the *benamidar* of Raja Bhikham, and not of the Ranee, and dismissed the suit, adding an opinion that Raja Bhikham himself would have been estopped from denying that the property belonged to Rajeshwari. On appeal the District Court affirmed the judgment, but did not repeat the dictum as to estoppel. In 1908 Rajeshwari executed a conveyance in favour of the present plaintiff, who in the same year raised the present suit.

The defence to the suit was, after discounting irrelevant pleas, based on two grounds, first, a denial of Rajeshwari's title to convey anything to the plaintiff; second, a denial that Rajeshwari had conveyed to the plaintiff on the allegation that she was a minor at the time of the conveyance. The learned Subordinate Judge upheld both defences and dismissed the suit. The Appeal Court reversed and gave judgment in favour of the plaintiff.

It will be convenient to dispose of the second ground defence first, as it depends on a pure question of fact. The Subordinate Judge, while commenting on the unreliability of the witnesses, three in number, adduced by the defendant to prove the minority, gave judgment on the ground that the rebutting evidence was not what it might have been. The

High Court agreeing with the criticism on the defendant's witnesses, came to the conclusion that the defendant had not made out his allegation. Their Lordships agree with the High Court. The onus to prove minority is on the defendant who asserts it. He brings no reliable evidence to prove this assertion. This defect in his proof cannot, their Lordships think, be cured by a mere criticism of the evidence brought by the plaintiff. It would further seem to their Lordships that the evidence tendered by the brother is not open to any obvious objection. But it is enough to say that the matter being left in doubt the defendant fails to prove his assertion.

The sole question then is whether there was a title in Rajeshwari. Formal title by progress there was not. Both Courts find that the sale by auction, though it gave a right to the purchaser to get a title, did not give him an actual title. Admittedly Kashi Nath never got the actual title, to which as purchaser he was entitled. The plaintiff in the Court below attempted to prove that Kashi Nath was a true purchaser for value. In this he failed, and both Courts are agreed as to this. He was only trustee for the Raja Bhikham. The argument in the lower Court then turned mostly on the effect of the judgments of 1905 and 1906 in the suit by the Ranee. The plaintiff urged that as between Raja Bhikham and the defendant, who were both co-defendants to the Ranee's suit, these judgments formed a *res judicata* to the effect that the property belonged to Rajeshwari. In deciding—rightly—that this was not so, the learned Subordinate Judge overlooked the fact that, though the dictum of the Subordinate Judge in the Ranee's suit that Raja Bhikham was in a question with Rajeshwari estopped from denying that the property was hers was an *obiter dictum*, yet on the emergence of the same facts as were found in that suit, the question arose to be decided in this suit, it being obvious that if Raja Bhikham was estopped, the present Raja, his son, taking by gratuitous title from him, was equally estopped. But the High Court took up that point and decided it in favour of the plaintiff. The question before their Lordships is whether that view was right.

Their Lordships think that it was. In the first place, they are satisfied that the facts are as have been stated above. When, therefore, Lajjadhari executed the conveyance in favour of Rajeshwari at the instance of Raja Bhikham, he (Raja Bhikham) was the true owner. Kashi Nath was a trustee for Raja Bhikham, and Lajjadhari could only succeed to his father's trusteeship. Further, Raja Bhikham was the proprietor of the estate of which Badam was a part. So that if by renunciation or limitation the right of Kashi Nath to get a conveyance became extinct, the full right as well as the title was in him. In this position of affairs not only did Raja Bhikham cause Lajjadhari to execute the conveyance, but when Rajeshwari proceeded to give effect to that conveyance by applying for registration he actively assisted her. By so doing he caused

her to change her position, for by registration she became bound for all the State liabilities which attach to the registered holders of immovable property. If then Raja Bhikham had lived and attempted to regain the property these actings of his would, in their Lordships' view, have estopped him from making the claim. He did not do so. The present defendant is his son, and succeeded by gratuitous title, and he therefore cannot do what his father would have been unable to do.

Their Lordships will humbly advise His Majesty to dismiss the appeal with costs.

RAJKUMAR JAGANNATH PRASHAD
SINGH

v.

SYED ABDULLAH AND OTHERS.

DELIVERED BY LORD DUNEDIN.