

Raje Dattaji Rao - - - - - *Appellant*

*v.*

Mangesh Rao - - - - - *Respondent*

FROM

THE COURT OF THE JUDICIAL COMMISSIONER OF THE CENTRAL  
PROVINCES.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 5TH JULY, 1932.

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*Present at the Hearing :*

LORD WRIGHT.

SIR LANCELOT SANDERSON.

SIR DINSHAH MULLA.

[*Delivered by* SIR DINSHAH MULLA.]

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The sole question for determination in this appeal is whether in September, 1921, the appellant agreed to pay to the respondent Rs. 60,000 as remuneration for supplying funds to the appellant and otherwise assisting him in a certain litigation.

The litigation related to the estate of Raje Bajirao (also known as Bajirao II), who died in January, 1906, leaving him surviving a widow, Yamunabai. The estate consisted of certain deshmukhi and despande watans in the districts of Nasik and Ahmednagar in British India, and sardeshmukhi and despande watans in Deccan Hyderabad. The appellant claimed the estate as the next heir of Raje Bajirao, but his claim was resisted by Yamunabai on behalf of Anandrao who, she alleged, was the son of Raje Bajirao born a few months after his death. The appellant alleged that Anandrao was not the son of Raje Bajirao, and that he was falsely put forward by Yamunabai as his son, but the Court of Wards of Hyderabad took up Anandrao's cause and supported his claim.

Some years after the death of Raje Bajirao, applications were made to the Revenue authorities for mutation of names in the Revenue records. These were followed by two suits, one in 1913 filed by the appellant against Anandrao in the District Court of Akola, and the other in 1917 filed by Anandrao against the appellant in the Court of the Subordinate Judge of Ahmednagar, the plaintiff in each suit claiming to be the rightful heir of Raje Bajirao.

The appellant, being in need of funds to carry on the litigation, approached the respondent, and on the 11th January, 1916, an agreement was made between the parties whereby for the consideration mentioned therein the respondent undertook to defray the expenses of the mutation proceedings. Another such agreement was made on the 2nd August, 1916, in relation to the Akola suit.

The Trial Court decreed the Akola suit in favour of the appellant, but the decree was reversed on appeal, and the suit was dismissed with costs on the 12th September, 1919, on the ground that it was barred by limitation.

The appellant being desirous of appealing to His Majesty in Council, a third agreement was made between him and the respondent on the 13th January, 1920, whereby the respondent undertook to defray the expenses of the appeal, and the appellant on his part agreed to pay to the respondent Rs. 65,000 if the appeal was successful. The appellant afterwards applied for and obtained leave to appeal to His Majesty in Council. The appeal, however, was dismissed as the appellant failed to deposit the necessary security. The Ahmednagar suit was pending at that date.

In the meantime a warrant had been issued by the Court at Akola for the arrest of the appellant in execution of the decree against him for costs. On the 25th June, 1921, he addressed a letter to the respondent in these terms:—

“ Now I do not at all rely on litigation. . . . I do not think it advisable to depend on litigation only under all the above circumstances, and it is also difficult that it will go on hereafter. I have considered this according to my humble understanding, and have been trying to settle this dispute for ever out of court. I made a vague mention of this to you in the last letter. Though my attempts to bring about a compromise succeed, remember well that you will be the first object of my consideration.”

On the 30th July, 1921, the appellant wrote another letter to the respondent stating that a compromise was being arranged by Sorabji Cama, who was the pleader engaged by the Court of Wards on behalf of Anandrao, and asking the respondent to join him on his way to Akola. The appellant and the respondent went to Akola on the 5th September, 1921, where they stayed in a room in the office of Sorabji Cama. Ghulam Ahmed Khan, a former manager of the Court of Wards specially deputed to go to Akola, and G. Choubal, an official of the Court of Wards, arrived there the next day, and the matter was discussed between the

parties on the 7th September. On the 8th September, Molvi Gulam Gous Khan Saheb, who was then the manager of the Court of Wards, arrived at Akola, and an agreement was reached between the parties on that day by which it was provided that in consideration of Anandrao paying Rs. 1,70,000 to the appellant within six months and allowing him to retain the watans at Nasik and Ahmednagar and undertaking, further, not to execute the decree for costs against the appellant, the appellant should give up his claim to the watans in the Hyderabad State.

It is the case of the respondent that before the matter was discussed with the officials of the Court of Wards on the 7th September, 1921, it was orally agreed between him and the appellant that if a compromise was reached the appellant should pay him Rs. 60,000 as remuneration for his trouble and expenses, and that Mr. Cama was informed about it; that at the meeting held on the 7th September the appellant himself told Ghulam Ahmed Khan that he had incurred heavy expenses in the litigation and that he would have to pay Rs. 60,000 to the respondent alone; that at that meeting the appellant started by demanding Rs. 2,00,000, but the demand was eventually reduced to Rs. 1,85,000; and that at the close of the meeting Ghulam Ahmed Khan asked for particulars in writing of the items making up the Rs. 1,85,000, whereupon the respondent wrote out the items in pencil on a piece of paper and handed it over to Ghulam Ahmed Khan. The items as they appear on the pencil note are as follows:—

“ Rs. 60,000 Pandit [that is, the respondent].

“ Rs. 18,000 Sundry payments.

“ Rs. 1,07,000 Raje [that is, the appellant].

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“ Rs. 1,85,000.”

It is also the respondent's case that at the interview with Molvi Gulam Gous Khan Saheb on the 8th September, the appellant agreed to accept Rs. 10,000 for miscellaneous expenses instead of Rs. 18,000 and Rs. 1,00,000 for himself instead of Rs. 1,07,000, but that the amount payable to the respondent was to stand at Rs. 60,000, and that the total sum payable to the appellant was thus reduced from Rs. 1,85,000 to Rs. 1,70,000.

In the meantime, Anandrao had been betrothed to the daughter of the Chief of Dhar, and the Chief, it would appear, was anxious that Anandrao should also have the watans at Nasik and Ahmednagar. Negotiations were thereupon opened with the appellant, and it was eventually agreed between the parties that in consideration of a further sum of Rs. 30,000 being paid to the appellant, the appellant should relinquish his claim to those watans in favour of Anandrao and recognize Anandrao as the son of Raje Bajirao. This agreement was made at Bombay on the 11th September, 1922. The next day the Court of Wards paid Rs. 2,00,000 to the appellant, out of which he paid Rs. 20,000 to the respondent.

On the 28th September, 1922, the respondent addressed a letter to the appellant, in which he mentioned the sum of Rs. 60,000 payable to him, and this he repeated in some of the subsequent letters. On the 28th January, 1923, the appellant paid a further sum of Rs. 1,884-12-0 on behalf of the respondent. No further payments were made, and by his letter of the 27th May, 1923, the appellant definitely repudiated his liability to pay anything more to the respondent. The respondent thereupon brought the suit out of which the present appeal arises on the 26th October, 1923, in the Court of the Second Additional Judge at Akola, to recover from the appellant the balance alleged to be due to him under the oral agreement mentioned above.

The defence was that no such agreement was made, and that if any such was made there was no consideration for it. As to the payments of Rs. 20,000 and Rs. 1,884-12-0 the appellant alleged that though the respondent was not entitled to anything, he made those payments to him as he had incurred expenses on his behalf, and that he had also promised to make further payments if the respondent produced his books of account and satisfied the appellant that he had spent more than what he had already been paid.

At the trial of the suit the respondent and the appellant each gave evidence in support of his case, and several witnesses were examined on both sides. The only witnesses, however, who were examined before the judge who decided the case were the appellant and one of his servants, and Vinayakrao, a witness for the respondent, who was partly examined before that judge. The rest of the evidence was either taken on commission or given before the predecessor of that judge.

The Trial Judge disbelieved the respondent's case, and dismissed the suit. On appeal the Court of the Judicial Commissioner, Central Provinces, set aside the decree of the lower Court, and passed a decree for the respondent. It is from this decree that the present appeal has been brought to His Majesty in Council.

The judgment of the Appellate Court proceeded both on oral and documentary evidence. Amongst the documents relied on by the respondent was the pencil note alleged to have been made on the 7th September 1921. As to this document the Trial Judge observed that it was "a creation of the plaintiff got up for the purpose of the case." The Appellate Court, on the other hand, treated this document as conclusive proof of the agreement in suit. After observing that the oral evidence alone was sufficient to establish the respondent's case, they said:—

"If there were any doubt about that or any other point in the case, it would be finally dispelled by the memorandum written by the plaintiff and signed and handed in to the officials of the Court of Wards by the defendant himself."

The document, however, was not signed by any of the parties as erroneously supposed by the Appellate Court. Their Lordships

also think that it has not been proved that it came from proper custody. Moreover, Ghulam Ahmed Khan, to whom it was alleged it was handed over, said in his evidence that he had no recollection about it. No weight, therefore, can be attached to the document, though their Lordships are far from saying that it was got up for the purpose of the suit as suggested by the Trial Judge.

Amongst the witnesses who deposed to the agreement on behalf of the respondent was Sorabji Cama who, it would appear, took an active part in bringing about the compromise. In his evidence he said: "I am quite sure that Raje Dattaji Rao meant to pay Rs. 60,000 to Pandit out of the sum of Rs. 1,70,000 payable by the Court of Wards." This passage has been quoted by the Trial Judge in his judgment, but in quoting it he inserted the word "not" before "quite," owing, it would appear, to an erroneous reading of Mr. Cama's evidence, and concluded that Mr. Cama's evidence did not support the respondent's case. As to the rest of his evidence the Trial Judge was of opinion that it was inconsistent in certain respects, and he discarded it on that ground. At the same time he said in his judgment: "I cannot . . . attribute any motive to Mr. Cama in his giving the evidence for the plaintiff." Nor was it suggested before their Lordships that Mr. Cama was not a credible witness. Their Lordships have examined the evidence in the case, and they are satisfied on the evidence especially of Mr. Cama that the agreement has been proved. Their Lordships think that there is no substance in the contention that there was no consideration for the agreement.

In the result, their Lordships are of opinion that this appeal fails, and that it should be dismissed, and their Lordships will humbly advise His Majesty accordingly. The appellant will pay the respondent's costs of this appeal.

In the Privy Council.

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RAJE DATTAJI RAO

vs.

MANGESH RAO.

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DELIVERED BY SIR DINSHAH MULLA.

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