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UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
2 MAR 1961 IN THE
25 RUSSEL SQUARE
LONDON, W.C.1.

PRIVY COUNCIL

No. 9 of 1957

ON APPEAL

FROM HER MAJESTY'S COURT OF APPEAL
FOR EASTERN AFRICA AT DAR ES SALAAM

55553

B E T W E E N

KESHAVJI RAMJI ... Defendant-Appellant
- and -
MOHANLAL RAMJI ... 1st Plaintiff-Respondent
SHIVJI RAMJI ... 2nd Plaintiff-Respondent
VANDRAVAN MAGANLAL Defendant-Pro Forma Respondent

AND BETWEEN

MOHANLAL RAMJI ... Plaintiff-Appellant
- and -
KESHAVJI RAMJI ... Defendant-Respondent
VANDRAVAN MAGANLAL ... Defendant-Respondent
SHIVJI RAMJI Plaintiff-Pro Forma Respondent

(CONSOLIDATED APPEALS)

CASE FOR KESHAVJI RAMJI AND VANDRAVAN MAGANLAL,
RESPONDENTS TO THE CROSS-APPEAL

KNAPP-FISHERS and
BLAKE & REDDEN,
31, Great Peter Street,
Westminster, S.W.1.

Solicitors for Keshavji
Ramji and Vandravan
Maganlal.

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RECORD

1. The first and second issues raised by the cross-appeal do not arise unless (contrary to Keshavji's contention) a partnership existed between him, Mohanlal and Shivji. The first issue is whether, if such a partnership existed, Mohanlal's share after the 31st December, 1947 (as from which date, if there was a partnership, Keshavji acquired Shivji's share in it under the first agreement) was one half or one third. The second issue, concerning the extent of Mohanlal's interest in two properties acquired after the 31st December, 1957, must necessarily follow the decision of the first issue.

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2. The effect of the first agreement was (if a partnership had existed since 1920) that Keshavji

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pp. 192-202 bought from Shivji the latter's share in the business. Mohanlal knew of this transaction between Keshavji and Shivji, as appears from the correspondence forming exhibits P7, P8 and P9. Keshavji respectfully submits that Mohanlal, by what he wrote in this correspondence and by his conduct in treating the partnership as continuing in existence on his return to Tanganyika from India in March, 1948, impliedly agreed to Keshavji's purchase of Shivji's share of the business. The position, therefore, was that by agreement between the three partners Keshavji acquired Shivji's share. For these reasons, upon which Bacon, J.A. relied in the Court of Appeal, Keshavji respectfully submits, that, if a partnership existed before the 31st December, 1947, that partnership was not dissolved on that date, but continued thereafter as a partnership between Keshavji, owning a 2/3 interest, and Mohanlal, owning a 1/3 interest. It follows that the properties bought after the 31st December, 1947 were owned by Keshavji and Shivji in the same proportions.

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3. The third issue raised by the cross-appeal is whether Mohanlal is bound by the second agreement. (This is the only issue in which Vandravan is interested). Keshavji executed this agreement on behalf of Mohanlal, under the power of attorney granted to him by Mohanlal on the 21st December, 1929. By that document Mohanlal appointed Keshavji his true and lawful attorney to ('inter alia')

'sell mortgage lease or otherwise dispose of or deal with any real or personal property (whether in possession or reversion) now or hereafter belonging to me' (clause 4)

and

'generally to do execute and perform any other act deed matter or thing whatsoever which ought to be done executed or performed or which in the opinion of my said attorney ought to be done executed or performed in or about my concerns engagements and business of every nature and kind whatsoever as fully and effectually to all intents and purposes as I myself could do' (clause 12).

4. To this issue the following provisions of the Indian Contract Act, 1872 are relevant :

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'2. In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context :-

.....

(h) An agreement enforceable by law is a contract:

x x x x x x x x x x

10 25. An agreement made without consideration is void unless -

(1) it is expressed in writing and registered under the law for the time being in force for the registration of documents, and is made on account of natural love and affection between parties standing in a near relation to each other

In any of these cases, such an agreement is a contract.'

20 5. Keshavji and Vandravan respectfully submit that the second agreement was a contract. It concerned certain properties theretofore owned by Keshavji, Mohanlal and Shivji in equal shares. By the agreement Keshavji, Mohanlal and Shivji reduced their shares in those properties to 28½% each, and conferred a share of 14½% upon Vandravan. By the terms of the agreement, Mohanlal received consideration for this transfer as follows :

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(i) Keshavji undertook to manage the properties for five years without any payment,

30 (ii) Vandravan accepted joint liability for a loan of Shs. 100,000 previously obtained on the security of one of the properties.

Alternatively, the agreement was a contract by virtue of s.25 of the Indian Contract Act; because it was made in writing, it was duly registered and it was made on account of natural love and affection between uncles and nephew. This being the nature of the second agreement, it fell within the terms

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of clauses 4 and 12 of the power of attorney, and Mohanlal was bound by Keshavji's execution of it.

6. Keshavji and Vandravan respectfully submit that upon the issues raised by the cross-appeal the judgment of the Court of Appeal for Eastern Africa was right, and the cross-appeal ought to be dismissed, for the following (amongst other)

R E A S O N S

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1. BECAUSE, if a partnership between Keshavji, Mohanlal and Shivji existed before the 31st December, 1947, that partnership was not dissolved on that date:
2. BECAUSE, if a partnership between Keshavji, Mohanlal and Shivji existed before the 31st December, 1947, Keshavji acquired Shivji's share on that date and Mohanlal agreed to the said acquisition:
3. BECAUSE Keshavji duly executed the second agreement within his authority as Mohanlal's attorney:
4. BECAUSE of the other reasons given by Bacon, J.A.

J.G. LE QUESNE.

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