Privy Council Appeal No. 29 *of* 1938

Oudh Appeal No. 23 *of* 1936

Rana Uma Nath Bakhsh Singh - - - - *Appellant*

v.

Jang Bahadur - - - - - - *Respondent*

FROM

THE CHIEF COURT OF OUDH AT LUCKNOW

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 8TH JULY, 1938

Present at the Hearing:

LORD ROMER.
SIR SHADI LAL.
SIR GEORGE RANKIN.

[*Delivered by* SIR GEORGE RANKIN.]

Rana Sir Shanker Bakhsh Singh
(born in 1840, died in 1897)

Lal Chandra Bhukhan Singh (died on 7th August, 1894)	Rana Sir Sheoraj Singh (died on 14th April, 1920)
Rana Uma Nath Bakhsh Singh (Appellant)	Kunwar Shambhu Nath Bakhsh Singh

Rana Sir Shanker Bakhsh Singh was Taluqdar of Khajurgaon. In 1890 he had made a will appointing his eldest son Lal Chandra as his successor, but Lal Chandra having died in 1894 a new disposition was made by Sir Shanker Bakhsh Singh by a codicil dated 1st November, 1894. By this codicil he gave to Sheoraj, his younger son, all his property moveable and immoveable, including the Khajurgaon estate but purported to provide that Sheoraj should not have power to make any son except Uma Nath Singh, his eldest son, the owner and successor to the estate "during his presence". It is unnecessary to discuss the effect in law of this provision. Sir Shanker Bakhsh Singh having died in 1897 was succeeded by Sheoraj who became Sir Sheoraj Singh, K.C.I.E. On the 9th May, 1913, two instruments were executed. The first was a deed of relinquishment (*dastbardari*) to which the parties were Sheoraj, Uma Nath (the defendant appellant) and Shambhu Nath, his brother. By this deed Sheoraj relinquished all his rights and property to the defendant appellant and purported to put him in possession forthwith. The deed provides that the defendant appellant should pay the debts of Sheoraj and

should be entitled to receive and collect all debts due to him. By its sixth clause it referred to the contemporaneous instrument—

> (6) " That I, the declarant No. 2 (Uma Nath), do hereby agree that I shall continue to act according to the conditions laid down in the deed executed to-day by me in favour of the declarant No. 1 (Sheoraj)."

The second instrument, described as an *ikrarnama* or agreement, was executed by Uma Nath alone. It recites that Sheoraj, his father, had appointed him successor and put him in possession; it provides that a certain village should be set aside for the maintenance of Sheoraj who was to get in addition a sum of Rs.7,045 in cash and a further sum after all his debts had been satisfied. Uma Nath by this deed also promised to pay Rs.3,000 annually to the wife of Sheoraj and a sum of Rs.2,000 annually to Musammat Sarwar, a concubine who lived at Khajurgaon and who had two sons by Sheoraj—viz., the plaintiff Jang Bahadur and Bam Bahadur. Clause (4) of the *ikrarnama* is as follows:—

> (4) That I, the executant, shall pay Rs.50,000, as specified below, in cash, to Jang Bahadur and Bam Bahadur, minor sons of the aforesaid prostitute, Musammat Sarwar, on their attaining majority provided they remain obedient:—Jang Bahadur Rs.30,000, Bam Bahadur Rs.20,000. After their attaining age of majority, I shall put Jang Bahadur in possession of village Mathiapur, pargana Dalmau and Bam Bahadur in possession of village Udwamao pergana Sareni with the right of inheritance but without the power of making transfer. The aforesaid persons and their heirs shall continue to pay from the date of their possession, land revenue, cesses and subscriptions of the British Indian Association and Canning College, along with the additional amount of Rs.10 per cent., by way of proprietary right, on the land revenue, to me, the executant, and my heirs. Except receiving the aforesaid amount in cash and remaining in possession of the villages, mentioned above, the aforesaid persons shall not be entitled to get any Guzara or allowance from the estate. If for any reason I may not be able to deliver possession of village Mathiapur to Jang Bahadur then I shall put him in possession of another village, having the same amount of profits and being of the similar quality, according to the above mentioned condition.

These deeds were immediately followed by mutation proceedings whereby the name of Uma Nath was substituted for that of Sheoraj in the Revenue papers. On the 14th April, 1920, Sheoraj died. At some time—apparently between 1924 and 1927—Musammat Sarwar and her sons left Kharjurgaon and went off to live with her own people in another village. The plaintiff respondent Jang Bahadur and his young brother Bam Bahadur were both minors at this time, but Jang Bahadur attained his majority on 2nd May, 1930.

On the 7th September, 1931, Jang Bahadur brought the suit out of which the present appeal arises against the appellant Uma Nath claiming the sum of Rs.30,000 under clause (4) of the deed of 9th May, 1913, and also possession of the village Mathiapur or another village of like value according to the terms of the deed. A great many issues were framed by the learned Subordinate Judge and discussed at the trial, but in the end the learned Judge came

to the conclusion that the plaintiff was not entitled to any decree for possession of the village or for a declaration of any title thereto. He also found that the plaintiff was not entitled to a decree for Rs.30,000 claimed because he had not fulfilled the condition of *ita'at*—that is, the condition as to obedience mentioned in clause (4) above recited. On appeal to the Chief Court of Oudh, Nanavutty and Zia-ul-Hasan JJ. allowed the appeal and gave the plaintiff a decree for possession of the village of Mathiapur and for Rs.30,000 against the defendant with certain interest, mesne profits and costs. From this decree the defendant has appealed to His Majesty.

Having regard to the fact that the plaintiff Jang Bahadur was not a party to either of the two instruments of 9th May, 1913, the first question which arises is whether or not clause (4) above recited of the instrument which was executed by the appellant alone amounts to a trust in Jang Bahadur's favour so as to entitle him to claim to have the trust performed. It is reasonably plain, as the Courts in India have held, that the two instruments must be read together, and that the obligations undertaken by the appellant are the terms upon which his father was surrendering to him immediate possession of all his property. Moreover the provision for Jang Bahadur of a village and of Rs.30,000 is intended to come out of the property which was being surrendered. In these circumstances a number of decisions by this Board have made it difficult for learned Counsel for the appellant to contest the proposition that the instruments created a trust in favour of Jang Bahadur. [*Nawab Umjad Ally Khan* v. *Mussumat Mohumdee Begam* (1867) 11 Moo. I.A. 517: 549; *Sri Sri Sri Lakshmi Narayana Ananga Garu* v. *Sri Madhawa Deo Garu* (1892) L.R. 20 I.A. 9; *Nawab Khwaja Muhammad Khan* v. *Nawab Husaini Begam* (1910) L.R. 37 I.A. 152; *Raja of Ramnad* v. *Sundara Pandiyasami Tevar* (1918) L.R. 46 I.A. 64; *Khajeh Solehman Quadir* v. *Nawab Sir Salimullah Bahadur* (1921) L.R. 49 I.A. 153.] Their Lordships are in agreement with the learned Judges of the Chief Court in holding that the effect of clause (4) above cited was to create a trust in favour of the plaintiff enforceable at his instance.

This leaves as the only defence remaining to the appellant the condition expressed in the clause by words which, as they appear in the translation before their Lordships are, "provided they remain obedient". The learned Subordinate Judge was of opinion that the word "*ita'at*" generally implies submissive obedience, which he explains as "such solicitous and affectionate attendance and dutifulness, as one would expect from a very near and dear relation". The learned Subordinate Judge concluded that the plaintiff must fail as regards the sum of Rs.30,000 because he had given no evidence to prove the performance of *ita'at*, and because he had not cross-examined the defendant whose complaint took the form that the plaintiff had never offered any nazar at the time of Holi or Dasehra, or other

festival, nor visited the defendant even when the defendant was ill. The learned Judges of the Chief Court read the condition in the clause as meaning that the plaintiff and his brother would be entitled to the money on condition of their remaining loyal to the defendant and considered that there was nothing to show that the plaintiff had committed any act of disloyalty. Their Lordships are unable to hold that the complaints made by the defendant of the plaintiff's conduct towards him can be regarded as establishing a breach of the condition "provided they remain obedient". The evidence of the plaintiff's mother and her brother to the effect that some four or six years after the death of Sheoraj she and her two boys were turned out by the defendant has an important bearing, as the Chief Court rightly thought, upon this question. It seems reasonably clear that the position of the woman and her sons at Khajurgaon was a very difficult one and the fact of her being a Mahomedan created further difficulties; not unnaturally her sons become Muslims.

This change of religion would not excuse them from fulfilling the condition as to obedience but the circumstances taken as a whole throw doubt upon the reality of the defendant's complaint. It seems doubtful if the plaintiff's attendance at ceremonies would have been welcomed and in any case there is no trace of any request having been made by the defendant to the plaintiff or of any intimation that the defendant desired his company or his attendance. The mere complaint, therefore, that the plaintiff did not come from the place where his mother was living and pay certain compliments to the defendant on the occasion of certain Hindu festivals is singularly unimpressive, and whether the word *ita'at* be translated "obedience" or "loyalty" their Lordships are satisfied that this condition affords no defence to the appellant in this case.

Their Lordships are of the opinion that this appeal fails and should be dismissed. They will humbly advise His Majesty accordingly. The appellant must pay the costs of the respondent.

(11202—3A) Wt. 8168—30 190 8/38 P. St. G. 338

In the Privy Council

RANA UMA NATH BAKHSH SINGH

v.

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DELIVERED BY SIR GEORGE RANKIN

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