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January 27.

T. V. R. SUBBU CHETTY'S FAMILY CHARITIES

v.

M. RAGHAVA MUDALIAR AND OTHERS.

(P. B. GAJENDRAGADKAR, K. N. WANCHOO and K. C. DAS GUPTA, JJ.)

Hindu Law—Alienation by widow—Reversioner's suit to set aside alienation—Ratification of alienation by reversioner.

M, a Hindu, died leaving his mother, widow, sisters and sisters' son and daughters. There were disputes between the mother and the widow which were settled at the instance of certain arbitrators. Under this settlement a portion of one of the houses was given to a sister of M, another portion to R son of another sister and his sister and a third portion to the daughter of the third sister. Certain properties, which had been agreed to be sold under the settlement were sold to the appellant by the mother and the widow. After the death of the mother and the widow R filed a suit as the next reversioner of M for recovery of the properties sold on the ground that the alienation was without necessity and was not binding on him. The appellant contended (i) that R was precluded from disputing the settlement between the mother and the widow as he had received a benefit under it and had ratified it by his conduct and (ii) that the transfer was for legal necessity.

Held, that the transfer was not binding on R and he was entitled to avoid it. The settlement between the mother and the widow was also not binding on R. If a person having full knowledge of his rights as a possible reversioner enters into a transaction which settles his claim as well as the claim of the opponents at the relevant time, he cannot be permitted to go back on that arrangement when reversion actually falls open. But the mere fact that the reversioner has received some benefit under the transaction or has not challenged its validity when it took place cannot bar his rights as a reversioner. It will always be a question of fact as to whether the conduct of the reversioner on which the plea of ratification is based does in law amount to ratification properly so called. In the present case the settlement was not in the nature of a family arrangement; at that time R was a minor and was not a party to any of the said transactions. There was no conduct of R which could amount to ratification of the settlement or of the alienation. At the time when he accepted the gift he could not know about his rights as a possible reversioner. Further, there was no legal necessity for the transfer.

Sahu Madho Das v. *Pandit Mukand Ram* [1955] 2 S.C.R. 22, *Dhiyan Singh* v. *Jugal Kishore* [1952] S.C.R. 478, *Kanhai Lal* v. *Brij Lal* (1918) L.R. 45 I.A. 118, *Rangasami Gounden* v. *Nachiappa Gounden* (1918) L.R. 46 I.A. 72 and *Ramgouda Annagouda* v. *Bhausaheb* (1927) L.R. 54 I.A. 396, referred to.

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 204/1956.

Appeal from the judgment and decree dated February 23, 1951, of the Madras High Court in O. S. Appeal No. 13/1948.

R. Keshva Aiyangar and *M. S. K. Aiyangar*, for the appellant.

A. V. Viswanatha Sastri and *Naunit Lal*, for respondent No. 1.

B. K. B. Naidu, for respondent No. 6.

1961. January 27. The Judgment of the Court was delivered by

Gajendragadkar J.

GAJENDRAGADKAR, J.—This appeal arises out of a suit filed by the respondent M. Raghava Mudaliar who claims to be the reversioner of Madhava Ramanuja Mudaliar. In his suit the respondent alleges that after the death of Madhava Ramanuja Mudaliar which took place on March 22, 1893, his property came into the possession of his widow Manickammal. Subsequently the said Manickammal and Rengammal, the widowed mother of the deceased Madhava Ramanuja Mudaliar alienated the properties without any legal necessity. According to the respondent the said alienation was not binding on him and so he was entitled to recover possession of the said property free of any encumbrance or charge. Manickammal died on October 18, 1941, whereas Rengammal died in June, 1921. On the death of the widow Manickammal reversion fell open and that has given a cause of action to the respondent for his present suit.

Madhava Ramanuja Mudaliar died issueless and was survived by his widow, his widowed mother, his sister Andalammal and the respondent and his sister Apurupammal who are the children of Ammakannu Ammal the second sister of Madhava Ramanuja Mudaliar, and Ethirajammal the daughter of the third sister of Madhava Ramanuja Mudaliar. To his suit the respondent impleaded the appellant Andalammal, Krishnasami Mudaliar, son of the said Apurupammal (defendant 1) and Susila Bai Ammal daughter of

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Ethirajammal as defendants 2 to 4. The Udayavar Temple by the sole trustee Bysani Krishnaiah Chetty was joined as defendant 5.

After her husband's death Manickammal obtained letters of administration to his estate from the High Court at Madras. It appears that the relations of the widow with her mother-in-law were embittered, and that led to disputes between them. These disputes were settled by the two widows in pursuance of the advice of certain arbitrators who mediated between them. The settlement thus reached was recorded in writing on May 27, 1893 (Ex. D-2). It would be relevent to refer to the main terms of the settlement at this stage. This settlement set out the properties covered by it as Serial Nos. 1 to 5. Item No. 1 which was a house in three blocks was divided between the respondent and his sister Apurupammal who were to take one share; Ethirajammal who was to take another share; and Andalammal who was to take the third share. House No. 62, which was Serial No. 2, and houses and shops Nos. 126 and 127 which were shown as Serial No. 3 were agreed to be sold, and it was settled that out of the sale proceeds the debts of the deceased Madhava Ramanuja Mudaliar and his father should be discharged; expenses incurred in obtaining the letters of administration should then be deducted along with the expenses of sale, and the balance should be divided equally between the two widows subject to a payment of Rs. 1,000/- to the mother-in-law in lieu of her jewels. The two cawnies of lands which were Serial No. 4 were agreed to be given to the maternal uncle of the deceased Madhava Ramanuja Mudaliar, whereas the moveables which were shown as Serial No. 5 had to be divided half and half between the two widows. This document contained a clause which provided that "in case any one of us contravenes the terms the other party shall not only cancel this agreement but his title to the estate of Madhava Ramanuja Mudaliar prior to the agreement shall in no way be affected subject to which this agreement has been entered into." The document thus executed was attested by four attesting witnesses.

It appears that soon after this agreement was finalised, Krishnasamy Mudaliar, defendant 3, objected to its validity and disputed the right of the widows to deal with the property in the manner specified in it. He was, however, persuaded to abandon his objections and a sale deed was executed by him conveying his reversionery rights to the two widows for consideration on September 10, 1894. By this document defendant 3 purported to recognise and grant an absolute title to the two widows in regard to the estate of the deceased (Ex. D-3). Subsequent to this document the two widows began to enjoy the properties as agreed between them.

On February 4, 1895 the two widows sold item No. 1 in Schedule II attached to the plaint, i.e., Nos. 126 and 127, Anna Pillai Street and Audiappa Naick Street respectively to Thatha Venkata Raghava Subbu Chetty. The appellant is the successor in title of the said division in respect of the said item No. 1 in Schedule II. In the present appeal we are concerned only with this item.

On May 27, 1895, a composite deed of partition and administration of property of the deceased was executed by and between the two widows (Ex. D-5). By this document the three blocks in the house shown as Serial No. 1 in Ex. D-2 were delivered into the possession of the respective donees. The maternal uncle of the deceased was given two cawnies of lands as therein stipulated and the debts of the deceased were discharged and expenses incurred in respect of the letters of administration were met. It is under these circumstances that the respondent filed his present Suit No. 56 of 1946 on the Original Side of the Madras High Court; and he claimed that the alienations made by the two widows were not binding on him and he was entitled to the possession of the property left by the deceased Madhava Ramanuja. The schedule attached to the plaint referred to four items of property, and as we have already pointed out it is only with item No. 1 out of these four items with which we are concerned in the present appeal.

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In regard to the said item the appellant urged that the agreement between the two widows (Ex. D-2) and the subsequent composite deed executed in pursuance of it (Ex. D-5) were in the nature of a family arrangement, and as such they were binding on the respondent. In was also alleged by the appellant that the respondent had recieved benefit under the said arrangement and by his conduct had ratified it. The appellant further pleaded that the transfer in favour of his predecessor was supported by legal necessity. Incidentally a plea of surrender was also raised by the appellant.

Mr. Justice Kunhiraman, who tried the suit, held that there was a family arrangement which bound the respondent. He also observed that the respondent had received benefit under the said arrangement and was therefore precluded from challenging its validity. The learned Judge incidentally made some observations which showed that he was inclined to uphold the plea of surrender raised by the appellant. In the result the respondent's suit was dismissed.

The respondent then took the matter in appeal and succeeded. The appeal court held that the impugned arrangement cannot be said to be a bona fide family settlement which would bind the respondent. Before the appeal court it was conceded that the plea of surrender raised by the appellant could not be sustained, and that the contention that the respondent was bound by the family arrangement could not also be sustained. It was, however, urged on behalf of the appellant that the respondent's conduct precluded him from disputing the validity of the arrangement but this argument was rejected by the appeal court; likewise, the contentions that the transfer in favour of the appellant's predecessor was justified by legal necessity also failed. As a result of these findings the respondent's appeal was allowed, the decree passed by the trial court was set aside, and the claim for possession made by the respondent was decreed. The respondent's suit was accordingly directed to go before the Official Referee for ascertainment of mesne profits

claimed by him. It is against this decree that the appellant has come to this Court in appeal.

The principal point which has been urged before us by Mr. R. Keshav Aiyangar on behalf of the appellant is that in substance the respondent has ratified the impugned transaction, has received benefit under it, and by his conduct has affirmed it, and so it is not open to him to challenge its validity and binding character. In support of this argument he has canvassed for our acceptance the proposition that if a person with full knowledge of his rights assents to a transaction which may otherwise be voidable at his instance and takes benefit under it, he is subsequently precluded from disputing its validity. In support of this argument he has relied on a decision of this Court in *Sahu Madho Das* v. *Pandit Mukand Ram* (1). In that case this Court has held that it is settled law that an alienation by a widow in exercise of her powers is not altogether void but only voidable by the reversioners who may either singly or as a body be precluded from exercising their right to avoid it either by express ratification or by acts which treat it as valid or binding. This Court also observed that it is a principle of general application underlying many branches of the law that a person who with full knowledge of his rights has once elected to assent to a transaction voidable at his instance and has thus elected not to exercise his right to avoid it, cannot go back on that election and avoid it at a later stage; having made his election he is bound by it. The argument is that though the respondent may not be a party to the impugned transaction, if by his conduct it can be said that he has elected to uphold it and has received benefit under it he cannot be allowed to go back upon the election. There is of course no doubt about the correctness of the principle thus enunciated, but the difficulty in the way of the appellant arises when the applicability of the said principle is tested in the light of the relevant material findings in that case. That is why it is necessary to refer very briefly to the findings of fact on which the decision in *Sahu*

(1) [1955] 2 S.C.R. 22.

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Madho Das's case (1) rests. In that case this Court considered the question as to whether the plaintiff Mukand Ram had assented to the impugned family arrangement, and observed that as he was not a party to the arrangement his assent to the arrangement itself and not to something else must be clearly established, and also his knowledge of the facts. Then, having thus posed the question the material evidence was examined, and it was held that the cumulative effect of the said evidence led to the reasonable inference that the plaintiff's assent was to the very arrangement itself, and his conduct as well as the conduct of his brother Kanhaiya Lal was consistent only with that hypothesis; in other words, the examination of the material evidence justified the inference that Mukand Ram had in fact elected to assent to the transaction and had received benefit under it, and so the doctrine of election or ratification precluded him from disputing the validity of the said transaction. It is, however, significant that dealing with the case of the minor sons, who were not parties either personally or through their guardians, and who did not claim title either through Pato or her daughters, this Court expressly observed that so far as they were concerned what they received were gifts pure and simple and the only assent that could be inferred from the mere acceptance of the gifts and nothing more would be assent to that particular gift and not assent to the gifts similarly made to others. This observation brings out in bold relief by contrast the relevant findings in the light of which the plaintiff was held precluded from disputing the validity of the impugned transaction.

The appellant has also relied on another decision of this Court in *Dhiyan Singh* v. *Jugal Kishore* (2). In that case it was held that even if the impugned award was invalid the plaintiff who disputed its validity wes barred from making that claim by reason of estoppel. Brijlal against whom the plea of estoppel was effectively raised appeared to have made a claim to the estate in question in 1884 when the impugned

(1) [1955] 2 S.C.R. 22 (2) [1952] S.C.R. 478

transaction took place, and it was as a result of this claim that settlement was reached and the impugned transaction effected. This Court held that even if the award which was challenged was invalid Brijlal by his conduct had precluded himself from raising the contention against the validity of the award. In coming to this conclusion this Court observed that the case before it was very similar to the one which the Privy Council had decided in *Kanhai Lal* v. *Brij Lal* (1). When we turn to the Privy Council decision itself we find that Kanhai Lal, who was held by the Privy Council to be precluded from challenging the arrangement to which he was a party, had set up a title in himself on the strength of an alleged adoption, and when, having regard to the said title, a settlement was reached and a compromise arrangement was made, it was held by the Privy Council that the doctrine of estoppel came into play. Kanhai Lal, who subsequently became a reversioner according to the Privy Council, was bound by the previous arrangement and "cannot now claim as a reversioner." These two decisions also emphasise the fact that if a person having full knowledge of his rights as a possible reversioner enters into a transaction which settles his claim as well as the claim of his opponents at the relevant time, he cannot be permitted to go back on that arrangement when reversion actually falls open.

There are two other decisions of the Privy Council to which reference may be made. In *Rangaswami Gounden* v. *Nachiappa Gounden* (2) the Privy Council had to deal mainly with the question of surrender, its theory and its essential features. Incidentally it had also to deal with the case of reversioner who had taken from an alienee from a Hindu widow a mortgage of a property which included a part of the property alienated, and the question raised was whether by reason of the fact that the reversioner had a mortgage of the said property he was precluded from challenging the validity of the said alienation; and the Privy Council held that he was not so precluded. In dealing with this aspect of the question the Privy Council

(1) (1919) L.R. 45 I.A. 118.

(2) (1918) L.R. 46 I.A. 72.

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observed that it is well-settled that though he who may be termed a presumptive reversionary heir has a title to challenge an alienation at its inception, he need not do so, but is entitled to wait till the death of the widow has affirmed his character, a character which up to that date might be defeated by birth or by adoption. The Privy Council then examined the nature of the mortgage, the properties included in it, and observed that the said mortgage consisted of 2/14ths of the mitta which had come to the mortgagors in right of their own succession, and the remaining share had come to them through the impugned deed of gift. Then it was observed that at the time of the mortgage the mortgagee did not know whether he would ever be such a reversioner in fact as would give him a practical interest to quarrel with the deed of gift; and the Privy Council asked "why should he not take all that the mortgagers could give or propose to give." "To hold that by doing so", observed the Privy Council, "he barred himself from asserting his own title to a part of what was mortgaged seems to their Lordships a quite unwarrantable proposition." This decision shows that the principle of election or estoppel or ratification must be applied with due circumspection and the mere fact that the reversioner has received some benefit under the transaction or has not challenged the validity of the transaction when it took place cannot bar his rights as a reversioner when reversion in his favour falls open.

The last case on which reliance has been placed by the appellant is the decision of the Privy Council in *Ramgouda Annagouda* v. *Bhausaheb* (1). In this case the widow of the last male holder had alienated nearly the whole of the property of her husband by three deeds executed and registered on the same day. One of the deeds was in favour of a presumptive reversioner. The Privy Council held that the three deeds had to be regarded as forming one transaction entered into by all the persons interested in the properties, and that after the reversion fell open, the reversioners who were parties to the said transactions

(1) (1927) L.R. 54 I.A. 396.

were precluded from disputing the two alienations by reason of their conduct. According to the Privy Council the three deeds in question were inseparably connected together and in that view Annagouda, the reversioner, who challenged two of the three transactions, not only consented to the sale to Shivgouda and the gift to Basappa—which were the two transactions impeached—but these dispositions formed part of the same transaction by which he himself acquired a part of the estate. Thus it may be taken to be well-settled that if a presumptive reversioner is a party to an arrangement which may properly be called a family arragement and takes benefit under it, he would be precluded from disputing the validity of the said arrangement when reversion falls open and he becomes the actual reversioner. The doctrine of ratification may also be invoked against a presumptive reversioner who, though not a party to the transaction, subsequently ratifies it with full knowledge of his rights by assenting to it and taking benefit under it. It is, however, clear that mere receipt of benefit under an arrangement by which a Hindu widow alienates the property of her deceased husband would not preclude a presumptive reversioner from disputing the validity of the said alienation when he becomes the actual reversioner. It must always be a question of fact as to whether the conduct of the said reversioner on which the plea of ratification is based does in law amount to ratification properly so-called. It is in the light of these principles that we must now consider the relevant facts in the present appeal.

There can be no doubt that the transaction which took place on May 27, 1893, as a result of the dispute between the two widows and with the intervention of the well-wishers of the family is not a family arrangement as understood under Hindu Law. This position was conceded before the High Court and is not disputed before us (Ex. D-2). Similarly, the sale deed which was executed by defendant 3 in favour of the two widows is of no assistance because it was obviously a sale by defendant 3 of his reversionary rights which were then no better than *spes successionis* and as

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such this transaction (Ex. D-3) cannot help to validate the earlier arrangement between the two widows. The composite document (Ex. D-5) of May 27, 1895, is in substance no more than an alienation no doubt executed for the purpose of carrying out the original arrangement between the two widows. Thus in dealing with the question as to whether the respondent is precluded from challenging the validity of the impugned transaction it is necessary to bear in mind that the original transaction is not a transaction in the nature of a family arrangement. Besides, he was then a minor and admittedly he was not a party to any of the said transactions.

It is, however, urged that the respondent obtained a certificate or a patta from the Collector in regard to the property conveyed to him under Ex. D-5, and the argument is that he has deliberately withheld the said patta because he apprehended that if produced the patta would go against him. The explanation given by the respondent for not producing the patta is attacked as unsatisfactory, and it is urged that the said explanation cannot possibly conceal his intention to keep back the document from the Court. In his cross-examination the respondent stated that the Collector's certificate which had been given to him by his grandmother had been filed by him in Suit No. 495 of 1916 in the City Civil Court, and he added that his advocate in the said suit had not returned the document to him. We may assume that the respondent has not produced the document though it was in his possession; but we have on the record two documents which were issued to the other donees, and all that the appellant is entitled to assume is that a similar document had been issued in favour of the respondent. In our opinion, the two documents on the record do not assist the appellant's argument that any representation had been made by the respondent to the Collector before he obtained a patta in his favour. In fact the issue of the patta is a routine matter which would necessarily follow on the execution of the registered sale deed (Ex. D-5). On the registration of the said document persons who got certain immoveable properties

under it were given the certificates by the Collector in ordinary course, and so no argument can be built up against the respondent that the acceptance of the patta amounts to the ratification of the original transaction of sale.

It is then urged that in Civil Suit No. 495 of 1916 filed in the City Civil Court at Madras by Apurupammal against the respondent and another, the respondent filed the written statement in which he admitted the validity of the impugned transaction. It appears that the plaintiff in that suit had based her claim on the said impugned transaction, and in respect of the said claim the respondent had alleged in paragraph 2 of his written statement that he admitted that in consequence of certain disputes which arose between the mother and the widow of the deceased Govinda Mudaliar a compromise settlement was arrived at in pursuance of which some transfers were effected. This, it is said, amounts to an admission of the validity of the said transaction (Ex. D-15). This argument, however, fails to take notice of the fact that while referring to the said compromise settlement the respondent had expressly added that the said compromise settlement was obviously to take effect only during the life tenancy of the widow of the deceased Govinda Mudaliar (Ex. P-3). In other words, taking the statement as a whole, as we must, the respondent looked upon the said compromise settlement as an alienation made by the widow and as intended to take effect during her lifetime and no more. In other words, far from supporting a plea of ratification against the respondent this statement strengthens his case that he took the benefit with the knowledge and under the belief that the arrangement under which the said benefit flowed was intended to be operative during the lifetime of the widow, and as such he had no occasion to challenge its validity whilst the widow was alive.

A somewhat similar argument is based on the conduct of the respondent in relation to Civil Suit No. 1117 of 1921 filed by Masilamani Mudaly, the sister's son, and the deceased Govinda Mudaliar in the Madras High Court (Ex. P-16). To this suit the

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respondent was impleaded as defendant 7. In this suit the said plaintiff had challenged the validity of the arrangement, and asked for appropriate injunctions against defendant 6 to the suit, Thuggi Kondiah Chetty, Trustee of Udayavar Koil, and other defendants from dealing with the property to the prejudice of the reversionary right of the plaintiff. It is unnecessary to refer to the pleadings in the said suit or to specify in detail the reliefs claimed. The only point which is relevant to consider is that the reversioner had challenged the arrangement in question. The respondent by his written statement had purported to support the plea made by the plaintiff, and had added that he was not personally aware of any attempt on the part of defendants 2 to 4 to alienate the properties in respect of their possession and enjoyment. This suit, however, did not proceed to a trial as it was dismissed for want of prosecution, and the argument is that since the respondent had supported the plaintiff in the said suit it was necessary that he should have got himself transposed as a plaintiff, when he found that the original plaintiff was allowing the suit to be dismissed for non-prosecution. In our opinion, this argument is far-fetched and cannot possibly sustain the plea of ratification against the respondent. If the respondent took possession of the property under the arrangement with the distinct understanding that the arrangement was to last only during the lifetime of the widow, we see no justification for the assumption that he should have carried on Civil Suit No. 1117 of 1921 or should in fact have challenged the said arrangement at all.

The last argument urged in support of the plea of ratification is based on the oral evidence given by the respondent in the present case. The respondent was asked about the quarrels between the mother and the widow of the deceased Mudaliar, and he said that they were living together and that there were quarrels between them. Then he was asked as to whether he got the property under the impugned arrangement, and he said that his grandmother gave him the house with the Collector's certificate and told him that she

was going to die soon and so he may take the house. The respondent also admitted that since the house was thus delivered to him and to his sister they were in possession of it and in enjoyment of its income. The respondent then stated that he was not aware of the document of 1895 until 1916, and that he came to know about the division between the two widows only in 1910. It is urged that this statement should not be believed, and that the reluctance of the respondent to disclose the truth should lead to the inference that he knew all about the impugned transaction and its effect, and that when he took possession of the property allotted to him under the said transaction he knew fully well about his rights and he accepted the benefits with the object of ratifying the whole transaction. In our opinion there is no substance in this argument.

In this connection it is relevant to remember that until Act II of 1929 was passed a sister's son, like the respondent, would have had very few chances of becoming an actual reversioner; he would have come in the list of bandhus; and so it would be difficult to assume that at the time when the respondent accepted the gift of the house he knew about his rights as a possible reversioner. Besides, the benefit which he obtained under the impugned transaction could also in substance have been claimed by him under an earlier arrangement entered into between Govinda Mudaliar and Madhava Ramanuja Mudaliar on February 7, 1887 (Ex. D-1). Having regard to the arrangement disclosed by the said document the benefit given to the respondent and the other children of the sisters of the deceased Mudaliar may as well have been based on the said arrangement, and all that the transactions of 1893 and 1895 did was to give effect to it (Exs. D-2 and D-5). Besides, as we have already pointed out, in 1893 the respondent was a minor, and when subsequent to 1895 he took possession of the property it does not appear on evidence that he knew that the intention of the widows was to treat the property as absolute owners and to convey absolute titles to the respective donees and transferees under

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the said transaction. He also could not have known about his rights as a possible reversioner. Therefore, in our opinion, the High Court was right in holding that the appellant had failed to establish his plea of ratification against the respondent. Indeed, to hold otherwise would be in the words of the Privy Council "a quite unwarrantable proposition" (1) (p. 87).

That leaves the question of legal necessity to be considered. The High Court has held that the impugned transfer cannot be said to have been justified by legal necessity; and, in our opinion, the finding of the High Court on this point is obviously right. In dealing with this question it may be relevant to recall that the widow of the deceased Mudaliar had obtained letters of administration to the estate of the deceased on April 26, 1893, and, as usual, in issuing the letters limitation had been imposed upon the widow that she could not deal with or transfer the property in question without the requisite sanction. There is some force in the argument urged before us by Mr. Sastri on behalf of the respondent that it was with a view to avoid the necessity to obtain the requisite sanction that the widow of the deceased Mudaliar was persuaded by her mother-in-law to enter into the impugned transaction under the guise of a family arrangement. The document itself (Ex. D-5) does not purport to be justified by legal necessity. In terms it purports to give effect to the original arrangement of 1893 (Ex. D-2); and if the said arrangement is not valid as a family arrangement the subsequent transfer would also be invalid. Besides, out of a total consideration of about Rs. 10,000/- the amount of Rs. 776/- can be taken to represent the debts due by the deceased Mudaliar; the rest of the items of consideration cannot be treated as constituting a legal necessity at all. The amount of Rs. 558/- was the expense incurred for executing the document; similarly the amount of Rs. 409/- representing the funeral expense of the deceased Mudaliar, had apparently been spent by the widow who wanted to reimburse herself and that cannot be a legal necessity. The other items of consideration do

(1) (1918) L.R. 46 I.A. 72.

not even purport to be for legal necessity. Therefore, in our opinion, the conclusion is inescapable that the impugned transfer is not justified by legal necessity.

The result is the appeal fails and is dismissed with costs.

Appeal dismissed.

MAHABIR PRASHAD RUNGTA

v.

DURGA DATT.

(J. L. KAPUR, M. HIDAYATULLAH and J. C. SHAH, JJ.)

Contract—Commercial transaction—Breach—Time, if of the essence of the contract—Aggrieved party, if can rescind the contract—Interest—Rate—Awarding of—Principle—Indian Contract Act, 1872 (IX of 1872), s. 55.

The respondent had agreed to transport coal from the appellant's colliery to the railway station. The appellant had to keep the road in repair and arrange for petrol and had to make the payment for the actual coal despatched by the 10th of the following month. The appellant complained that he was suffering loss as the respondent had slowed down the work and the respondent complained that by not arranging for the petrol, not keeping the road in repairs and not making payments of amounts due the appellant had made it impossible to fulfil the contract. The quantity of coal transported was a fact within the knowledge of the appellant and the agreement merely provided for payment of the bills by 10th of the following month, without stating expressly that the presentation of bill was a condition precedent to the payment. The appellants contended that time was not of the essence of the contract and in any case the payment of the bills depended upon the presentation of bills in time and also challenged the award of the interest.

Held, that in commercial transactions time is ordinarily of the essence of the contract and was made so in the contract and when this important condition of the agreement was broken, s. 55 of the Indian Contract Act could be invoked by the aggrieved party and he was entitled to rescind the contract.

In the present case by withholding the payment of the bills cl. (5) of the contract was breached by the appellant.

Held, further, that interest for a period prior to the commencement of suit is claimable either under an agreement or usage of trade or under a statutory provision or under the Interest Act for a sum certain where notice is given. These