
(1937) 03 AHC CK 0019
In the Allahabad High Court
Case No : F.A. No. 567 of 1933

Ganpat Rai

APPELLANT

Vs

Bhagwat Dayal, Minor through his Mother Mst. Har Dei

RESPONDENT

Date of Decision : 17-03-1937

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : (1937) 03 AHC CK 0019

Hon'ble Judges : Rachhpal Singh, J; Harries, J

Bench : Division Bench

Advocate : S.K. Dar and Din Dayal, for the Appellant; K.N. Katju, M.A. Aziz and S.B.L. Gaur for Respondent, for the Respondent

Final Decision : Allowed

Judgement

Harries and Rachhpal Singh, JJ.—This is a Plaintiff's first appeal arising out of a suit to recover a sum of money.

In order to understand the case, it is necessary to set forth the facts of the case at some length.

2. The following pedigree will show the relationship between the parties:

In 1889, Munshi Gotal Rai died. He left a widow, Mst. Rani Chandra Kunwar who succeeded to the estate of her deceased husband as a Hindu widow.

3. Ganpat Rai, Plaintiff alleges that in 1897 he was taken in adoption by Mst. Rani Chandra Kunwar in accordance with the permission given by her deceased husband.

4. On the 14th September, 1920, Ganpat Rai instituted regular suit No. 170 of 1920 in the Court of the second Additional Subordinate Judge of Aligarh against Pabu Lal shown in the pedigree. In this suit, Mst. Rani Chandra Kunwar was a so made a party. The suit was for declaration of his rights and for issue of an injunction against Babu Lal restraining him from dealing in any manner with the

properties specified in the plaint.

5. It appears that Mst. Rani Chandra Kunwar died a day after the institution of the above mentioned suit which was continued by Ganpat Rai Plaintiff against the other persons who were Defendants.

6. Babu Lal contested the suit filed by the Plaintiff. He denied the adoption set up by Ganpat Rai, Plaintiff. One of the pleas taken by Babu Lal was that he had been taken in adoption by Chuinni Lai (brother of Gopal Rai) and was therefore the nearest reversioner of Gopal Rai son of Harsukh Rai and husband of Rani Chandra Kunwar. He also pleaded that Mst. Rani Chandra Kunwar had executed a will in his favour under which he had become entitled to all the property left by her.

7. Eventually the dispute between the parties was referred by them to certain arbitrators. The deed under which this reference was made was executed on the 2nd February, 1921, and is printed at pages 51 and 52. In this agreement, it is recited among other things that "there is a dispute between the parties in respect of the Zamindari, residential, movable and immovable properties and silver and gold ornaments, left by Rani Chandra Kunwar, widow of Munshi Gopal Rai, Khattri, by caste, resident and "raisi; of qasba Bulandshahr."

8. The arbitrators made their award immediately. It is dated the 3rd February, 1921, and is printed at pages 33 and onward. It is important to bear in mind that the arbitrators in their award recited that "dispute relating to the estate of Munshi Gopal Rai, rais and Rani Chandra Kunwar of Buland-shahr, between Lala Ganpat Rai, Plaintiff, 1st party and Lala Din Dayal, alias Babul Lai, Defendant 2nd party"s have been referred to them for arbitration." The arbitrators made their award. The parties accepted this award and treated it as a compromise between them and got it duly registered and on the basis of it a decree in suit No. 170 of 1920 was passed by the Court in accordance with the terms of the compromise. Under these terms, Ganpat Rai was given a 9/16th share while 9/16th share was set apart for Babu Lal in the entire estate of Gopal Rai, son of Harsukh Rai and husband of Rani Chandra Kunwar his widow.

9. It appears that while the suit No. 170 of 1920 was pending, one Chuuni Lal claiming to be the rightful reversioner of the husband of Mst. Rani Chandra Kunwar instituted suit No. 12 of 1921 in which both Ganpat Rai as well as Babu Lal were Defendants. During the pendency of that suit Babu Lal died and the name of his son, Bhagwat Dayal, the present Defendant who is a minor was substituted.

10. The suit instituted by Chunni Lal was contested by Ganpat Rai, Plaintiff and Bhagwat Dayal minor. It was decreed in favour of Chunni Lal. Against that decree, a joint appeal was preferred by Ganpat Rai and Bhagwat Dayal to this Court. The result of that appeal was that it was partially allowed and it was held by this Court that Bhagwat Dayal, the present Defendant who was also a Defendant in that case as already mentioned was held to be exclusively entitled

to the "stridhan" property of Mst. Rani Chandra Kunwar which comprised cash amounting to nearly seventy-eight thousand and odd and some other property.

11. The parties, however, it appears were not satisfied with the decision of this Court and they applied for leave to appeal to His Majesty in Council. While those proceedings were pending, Bhagwat Dayal, the present Defendant arrived at a compromise with Munshi Chunni Lal and others under which he accepted a sum of Rs. 62,000 as the stridhan money of Mst. Rani Chandra Kuavar. Under the terms of that compromise arrived at between him and Chunni Lal and others, Bhagwat Dayal, the present Defendant became entitled to a sum of Rs. 62,000.

12. The Plaintiff, Ganpat Rai instituted the present suit to recover a 7/16th share in this sum of Rs. 62,000 and odd in view of the compromise decree which was passed in his favour in suit No. 170 of 1920 to which a reference has already been made.

13. The suit was resisted by Bhagwat Dayal minor on various grounds. It is not necessary to refer to all of them as most of them were not pressed before us on behalf of the Defendant-Respondent. In the Court below the defence contended that the suit of the Plaintiff was barred by the rule of res judicata. It was further urged that the award relied upon by Ganpat Rai, Plaintiff was not binding on the Defendant. Further it was pleaded that the suit was not within limitation and also that it was not maintainable. The Defendant further look a plea to the effect that in any case the remedy open to the Plaintiff was to have made an application for execution and it was not open to him to institute a regular suit and such a suit was barred by the provisions of Section 47 of the Code of Civil Procedure.

14. The learned Civil Judge accepted the contention raised on behalf of the Defendant on the question of res judicata. He held that the doctrine of former adjudication applied to the case and, therefore, the Plaintiff's suit was incompetent. Other points taken on behalf of the Defendants were mostly decided in favour of the Plaintiff; but as the Court below held that the suit was barred by the provisions of Section 11, CPC Code, it was dismissed. The Plaintiff has preferred an appeal against the decision of the Court below.

15. The most important question which we have so decide in this case is as to whether or not the finding of the Court below on the question of the application of Section 11 of the Code of CPC is correct.

16. Before we proceed further, it is necessary to make mention of a point taken on behalf of the Defendant-Respondent in this case. It was urged that when the father of the Defendant and Ganpat Rai Plaintiff made a reference to arbitration, the reference was confined to the property of Munshi Gopal Rai and not to the estate left by Mst. Rani Chandra Kunwar, his widow. In our opinion, this contention is quite wrong and can not possibly be conceded. We have already pointed out that at the time when Ganpat Rai instituted his former suit No. 170 of 1920, Mst. Rani Chandra Kunwar was alive but she died a day after the suit was instituted and there can be no doubt that the parties were fighting not only

the estate of Munshi Gopal Rai but also for the estate of his widow Mst. Rani Chandra Kunwar. This is made clear by the terms of the reference made to the arbitrators. At page 31, the parties to the agreement stated in most clear words that the dispute between them related to the zamindari etc., left by Rani Chandra Kunwar, widow of Munshi Gopal Rai, This shows that the arbitrators were asked to make an award in respect of every thing which Rani Chandra Kunwar was possessed of at the time of her death. The award made by the arbitrators also goes to show that the dispute which was referred to them related not only to the estate of Munshi Gopal Rai rais but also to the estate of Mst. Rani Chandra Kunwar as is made clear in paragraph 2 of the arbitration award at page 53.

17. The result of the settlement between Ganpat Rai and Babu Lal, father of Bhagwat Dayal Defendant was that so far as they were concerned, a final settlement was made by them under which they agreed to divide the estate left by Munshi Gopal Rai and his widow, Mst. Rani Chandra Kunwar and it was finally settled that their shares will be 7/16th and 9/16th respectively. In our opinion, it is no longer open to any of the parties to that settlement or their representative to challenge that. The compromise was registered and was made a rule of the Court and a decree was passed on the basis of it and the matter has, therefore, become final.

18. The learned Judge of the Court below, in our opinion, was wrong in holding that it was still open to the son of Babu Lal to take a plea in derogation of the position taken up by his father. The learned Judge deals with this point at page 18 in his judgment and he observe d as follows:

There is no positive evidence before me to support this contention of the Plaintiff that Babu Lal had given up his claim on the basis of the said will. It is on the contrary clear from the award itself that Babu Lal did set up his claim on the basis of the said will but the arbitrators did not consider it necessary to decide that question-vide paragraph 8 of the award Exhibit 8 (114C). It is difficult on the face of these facts to hold that Babu Lal had abandoned his claim on the basis of he will. Even if it be assumed for a moment that Babu Lal's action in accepting the award amounted by implication to a waiver of his plea on the basis of the said will we have to take into consideration in the present case the facts that Babu Lal came to die during the pendency of the suit No. 12 of 1921 and was succeeded by his son, the present Defendant who was a minor and why could not be held to be bound by the waiver of his father.

19. In our opinion, the learned Judge's view is not correct. It is true that in the suit No. 170 of 1920 instituted by Ganpat Rai, Babu Lal set up a will alleged to have been executed by Mst. Ram Chandra Kunwar in his favour. It is further tree that the arbitrators did not consider it necessary to give any finding on this question. This, however, does not affect the case at all. When Ganpat Rai institured his suit, he took up certain pleas. He could not be certain which of them would be accepted by the Court. Similarly Babu Lai "rais" took up certain pleas in defence but he could not have been certain in his mind how the matter

would be eventually decided. In view of this both parties decided to refer the matter to arbitration. The arbitrators divided the estate between the two in certain manner and for all purposes their decision became final between the parties. It was not necessary for them to have given a finding on each and every question referred to them. It is well-known that in any number of cases arbitrators adopt rough and ready methods for putting an end to the litigation between the parties and in all likelihood this is what they did in this case which was referred to them. They did not go into all the contentions raised between the parties; but decided that each of them should get a certain share. That decision when it became final, put an end to all the controversies between the parties. It is no longer open to any one of "them to say that he is entitled to re-agitate a point which had been taken either in attack or in defence on the ground that the arbitrators did not give any finding on it. When the arbitrators made an award, all disputed points between the parties on which they were at variance were set at rest as a result thereof and when the arbitrators after taking into consideration the pleas raised on both sides gave a finding that each party was entitled to a specific share, then all controversies between the parties came to an end. It is not open to either of them to re-agitate any of the pleas which had been taken by them before the matter was referred to arbitration. The result of the arbitration award was that the Plaintiff became entitled to a 7/16th share in the estate of Gopal Rai and Mst. Rani Chandra Kunwar and the Defendant's father became entitled to the remaining 9/16th share. So far as the Plaintiff is concerned, the Defendant can not now take up a new position and say that the question as to whether or not a will had been executed by Mst. Rani Chandra Kunwar in favour of his father, is still an open one. So far as the Plaintiff, the Defendant and his father are concerned, the question has been set at rest by the award made by the arbitrators.

20. The view taken by the learned Civil Judge that as the Defendant is a minor, he can not be bound by the position taken up by his father, is wholly incorrect. Here it may be stated that a clear distinction has to be made between a case where a minor has his own right in property and the case where he claims a right through his father. Take the case where the father has entered into an agreement under which the joint family estate has been affected. It may be open to the minor in that case to come forward and say that as he had an interest in that property in his own right, any agreement made by his father in derogation of his rights is not binding upon him. The case, however, becomes altogether different where the minor has no right of his own. In the case before us, the father considered himself entitled to certain estate and among other pleas, he set up a will alleged to have been executed by Mst. Rani Chandra Kunwar in his favour. If he was not able to prove the will, surely the minor can not come forward and say that he should be permitted to fight out the matter again. If the father considered in his own interest that the dispute between him and other party who was contesting his right should be settled by arbitrators, he was perfectly entitled to do so. If he lost the case, it would be no longer open to his son to come

forward and re-agitate the matter. If we were to accept the pleas raised on behalf of the Defendant, somewhat curious results will follow. If the Defendant says that he is permitted to set up the will in spite of the arbitration proceedings, it will be equally open to Ganpat Rai to say by instituting another suit that it is open to him to plead that he was the adopted son of Gopal Rai and was, therefore, entitled to the whole estate of both Munshi Gopal Rai and Mst. Rani Chandra Kunwar. For the reasons given above we have no hesitation in holding that as between Ganpat Rai on one side and Babu Lal and Bhagwat Dayal, his minor son on the other, the question about the will alleged to have been executed by Mst. Rani Chandra Kunwar in favour of Bhagwat Dayal, is no longer open and is finally settled.

21. We have already pointed out that while Ganpat Rai and Babu Lal were still fighting a suit had been instituted by Chunni Lal who claimed to be entitled to the whole estate to the exclusion of both Ganpat Rai and Babu Lal. It is a common ground between the parties that both Ganpat Rai and Babu Lal jointly contested the claim of Chunni Lal. All the defences that were open to them were put forward. Chunni Lal succeeded and his claim was decreed by the Second Additional Subordinate Judge of Aligarh. It may be pointed out here that while the suit No. 12 of 1921 instituted by Chunni Lal was pending in the Court of first instance, Babu Lal the father of Bhagwat Dayal had died and Bhagwat Dayal was made a party to that suit. When the suit was decreed, Ganpat Rai and Bhagwat Dayal minor preferred a joint appeal to this Court against the decree of the Court below. In the appeal Bhagwat Dayal was allowed to amend his defence and the case was remanded to the Court below for findings on certain issues. Eventually the matter was decided by this Court by its judgment dated the 21st March, 1928, which is printed at pages 151 to 169. This Court in that case held that Mst. Rani Chandra Kunwar had left a will in favour of Babu Lal under the terms of which Babu Lal was entitled to certain reliefs. The result was that the appeal was decreed in part and Babu Lal's son obtained a decree in respect of three items. One of them being a sum of Rs. 78,545/10/5 out of the sum of Rs. 104,061/- held in deposit in Court with proportionate interest (if any) which had accrued on this deposit. The learned Judges who decided the case remarked in the concluding portion of their judgment that

the other Appellant, Ganpat Rai, is entitled to nothing and his appeal fails entirely.

22. It is contended before us that the above judgment operates as res judicata and bars the claim of Ganpat Rai to any portion of the above-mentioned sum. We wish to point out here that an appeal was preferred by Chunni Lal against this decision to His Majesty in Council. But during the pendency of proceedings in appeal, a compromise was arrived at between Chunni Lal and Bhagwat Dayal minor under which the former recognised the right of Bhagwat Dayal to a sum of Rs. 62,000/- out of Rs. 78,545/10/5. The contention of the Defendant is that as a result of the decision of this Court, dated the 21st March, 1928, the claim of Ganpat Rai is not sustainable. We have no hesitation in holding that this

contention is wholly unsound and can not be accepted. The learned Judge of the Court below, however, came to the conclusion that the contention of the Defendant was sound. We are unable to agree with the view taken by the lower Court on this point. It has to be borne in mind that when Chunni Lal instituted his suit, both Ganpat Rai and Babu Lal had put up a joint defence. They had divided the estate left by Munshi Gopal Rai and his widow, Mst. Rani Chandra Kunwar between themselves and they were jointly defending the attack made on their rights by a common enemy. In a case of this type it was open to them to put alternative pleas and to defeat the claim of their enemy somehow. In these circumstances, they took up all the pleas which were possible. It was open to them to state in the first instance that Chunni Lal should not succeed because Ganpat Rai was the adopted son of Mst. Rani Chanira Kunwar. Then it was open to him to allege that in case it was found that Ganpat Rai was not the adopted son of Gopal Rai, nevertheless Chunni Lal was not entitled to succeed because Babu Lal had been adopted by Chandra Kunwar deceased. The Defendants in that case were further entitled to say that Chunni Lal was not entitled to the estate of Mst. Rani Chandra Kunwar on the ground that she had left a will in favour of one of them. All these pleas were taken by them in defence in the alternative and any one of them was sufficient to defeat the claim of Chunni Lal. They might have been inconsistent pleas; but it is open to the Defendants who are jointly defending a suit to resist the claim of a rival on any ground which they might be able to prove.

23. The record shows that this is what happened in the case before us. One of the defences which one of the Defendants put up in the case of Chunni Lal was that Ganpat Rai was the adopted son of Munshi Gopal Rai and was, therefore, entitled to the whole estate. If that defence had prevailed, then the claim of Chunni Lal would have been certainly dismissed and the Defendants would have been successful in spite of the fact that they were not able to prove any of their other allegations. The Courts, however, held that Ganpat Rai was not the adopted son of Munshi Gopal Rai. The Defendants then urged in the case that if Ganpat Rai was not the adopted son, then Babu Lal was entitled to succeed as adopted son of Mst. Rani Rup Kuar. The Court decided that he was not the nearest reversioner. It was then open to the Defendants to urge that the claim of Chunni Lal should be dismissed in respect of the estate of Mst. Rani Chandra Kunwar because she had made a will in favour of Babu Lal under which she had left her property to him. That plea succeeded and in respect of a portion of the estate, the claim of Chunni Lal was dismissed.

24. The finding of this Court does not, however, operate as *res judicata* so far as Ganpat Rai is concerned. Ganpat Rai and the defendant's father, Babu Lal had agreed between themselves by accepting the arbitration award that each of them was entitled to a specific share in the properties left by either Munshi Gopal Rai or Mst. Rani Chandra Kunwar. In the appeal decided by this Court, there was no point in controversy between the two Defendants to the appeal. It was casually mentioned to us that Ganpat Rai did not take much interest in the prosecution of

the appeal. That may be so: but that does not affect his right. As between him and Babu Lal, the matter had been decided finally about their rights in the estates left by Munshi Gopal Rai and his widow. There was no need for this Court to enter into the question as regards the validity of the decree obtained by Ganpat Rai against Babu Lal and it is further clear to us that no such question arose in the case. Nor was any such question decided or could be decided on the pleadings in the case. That there was no contest between Ganpat Rai and Babu Lal is made clear by a perusal of the grounds of appeal which are printed at pages 119 and 120. In paragraph 6 of the grounds of appeal, it is recited

Because it is satisfactorily proved that Rani Chandra Kuar in pursuance of the requisite authority to adopt, adopted Ganpat Rai with all the necessary formalities under the Hindu Law and the criticism of the Court below about the evidence, oral and documentary bearing on the point is not just.

25. In paragraph 9 of it, it is recited as follows:

Because it is satisfactorily proved that Rani Rup Kuar in pursuance of the requisite authority to adopt, adopted Babu Lal with all the formalities under the Hindu Law and the criticism of the Court below about the evidence, oral and documentary, bearing on this point is not just.

In paragraph 14, it is recited

Because the will of Rani Chandra Kuar could in no case be defeated with reference to her "stridhan" property and there was no justification for the trial Court refusing the Defendants' application to frame an issue bearing on this point.

26. It will be seen that these are clearly inconsistent pleas and, therefore, it is manifest that all that the two Defendants were anxious about was to defeat the claim of Chunni Lal and there was no difference as between themselves on any point. It did not matter to them whether the claim of Chunni Lal was defeated on account of the alleged adoption of Ganpat Rai by Chandra Kuar or of Babu Lal by Mst. Rup Kuar. In this Court, Bhagwat Dayal Defendant was permitted to take an additional plea in the alternative and it was that Mst. Kani Chandra Kunwar was in possession of certain "stridhan" property in her own right and that she had made a will in writing in favour of Babu Lal, his father on the 23rd July, 1920. This Court came to the conclusion that this plea was established and that is the reason why the suit of Chunni Lal in respect of certain items of the property referred to above was dismissed. But that does not affect the case of the Plaintiff. Stress has been laid before us on a sentence which is to be found in the concluding portion of the judgment of this Court at page 169. Learned Counsel for the Defendant-Respondent points out that their Lordships gave a decree to the extent of Rs. 78,545-10-5 out of the sum of Rs. 104,061 in deposit in Court with proportionate interest (if any) which has accrued on this deposit and they expressly stated that "the other Appellant, Ganpat Rai, is entitled to nothing and his appeal-fads entirely.

27. We are not able to agree that this in any way affects the position of Ganpat Rai. Certain alternative pleas had been put up by the joint Defendants in the appeal before their Lordships. They discussed the various points and then came to the conclusion that of all the pleas put up before them on behalf of Ganpat Rai and Babu Lal, the Defendants had only been able to establish that a will had been executed by Mst. Rani Chandra Kunwar in favour of Babu Lal in respect of her "stridhan" property and that being so, Babu Lal was entitled to that amount and, therefore, a decree was passed in favour of his son. The appeal of Ganpat Rai had to be dismissed on the findings arrived at in the case because he had not been able to prove that he was the adopted son. The Court in that case had to decide which of the two Defendants was entitled to a relief, if any, against Chunni Lal and they came to the conclusion that Bhagwat Dayal alone was entitled to a relief. Ganpat Rai Plaintiff bases his claim on the ground that under the agreement arrived at between him and the father of the Defendant, he is entitled to a 7/16th share in whatever property the Defendant gets in the estate of Munshi Gopal Rai and Mst. Rani Chandra Kunwar and that claim, in our opinion, is irresistible. We may point out that Mr. B.E. O'Connor who appeared in that case on behalf of the Appellant argued the case on behalf of both of them jointly and he was naturally anxious to defeat the claim of Chunni Lal. It did not matter to him whether the decision in his favour rested on the plea of adoption set up by Ganpat Rai or on any of the pleas taken by Bhagwat Dayal. This Court in the suit of Chunni Lal had to decide whether on any of the grounds taken by Ganpat Rai and Bhagwat Dayal, the suit of Chunni Lal was liable to be dismissed. Had they found that Ganpat Rai's plea of adoption was established, the learned Judges would, have dismissed the suit of Bhagwat Dayal. But as one of the pleas of Bhagwat Dayal succeeded, so the claim was partially-decreed in his favour but that decree was for the benefit of both Bhagwat Dayal and Ganpat Raj and the mere mention in the judgment that the claim of Ganpat Rai was dismissed, did not affect his rights which were secured to him under the award which was accepted by him and the father of Bhagwat Dayal. For the reasons given above, we are of opinion that the decision of the Court below on the question of res judicata is not correct and must be reversed.

28. It was argued before us by learned Counsel appearing for the Defendant-Respondent that the suit of the Plaintiff was not within limitation. In our opinion, the decision of the Court below holding that the suit is within limitation is correct. It may be pointed out that the Court which decided the dispute between Ganpat Rai and Babu Lal passed an order that during the pendency of the suit of Chunni Lal, the money held in deposit in which the Plaintiff claims a 7/16th share, shall not be given to any one. The question as to whether Bhagwat Dayal and the Plaintiff were entitled to a share in this sum was decided by this Court finally only on the 21st March, 1928, and then the Plaintiff became entitled to a 7/16th share. The Plaintiff's suit was instituted on the 24th November, 1932, and is well within limitation. The Defendant's contention in the Court below was that the suit was governed by Article 120 of the Indian Limitation Act. Even if we accept

this contention, the suit is within limitation.

29. Another plea on behalf of Defendant was that Section 47, CPC Code, barred the suit. Learned Counsel for the Defendant contended that the proper course for the Plaintiff was to make an application for execution that the suit filed by him was not maintainable. This contention was rejected by the learned Judge of the Court below and in our opinion, rightly. He was right in holding that the decree passed on the basis of the award which was accepted by the parties was a declaratory decree and, therefore, the only remedy which the Plaintiff had was to institute a suit. We think that this view is correct and there is no force in the contention that Section 47 of the Code of CPC is a bar to the present suit.

30. We may point out that the learned Judge of the Court below in his judgment at page 20 stated that

even if the Plaintiff had been found entitled to any decree, he could not have in any case recovered more than 5/16th share.

31. It appears that the Plaintiff in the course of his cross-examination as a witness was asked, whether he had sold out 2/16th share, to anybody else and he admitted having done so. In our opinion the view taken by the learned Judge is not correct. The Defendant in his written statement had not taken any plea that the Plaintiff was not entitled to recover the entire 7/16th share in the amount. It may be that he had executed a sale-deed assigning a 2/16th share to some body else; but that does not prevent him from claiming the entire amount from the Defendant. The person in whose favour the Plaintiff made this assignment is not a party to the suit and the Plaintiff is liable to that person to the extent of the share he may have sold to him. The Defendant can on no ground be permitted to defeat the claim of the Plaintiff. The proper Course for the Defendant was to have asked the Court to make the vendee also a party to the suit; but as there was no pleadings on this quest on, the point does not arise.

32. Under the terms of the award referred to above which was accepted both by Ganpat Rai and Babu Lal, it had been agreed between them that a sum of Rs. 40,000/- would go towards charity. In this case, however, we are not called upon to give any decision as regards this amount.

33. In our opinion, the Plaintiff is clearly entitled to a decree. We, therefore, allow this appeal, set aside the order passed by the Court below and decree the Plaintiff's claim for a sum of Rs. 30,000/- against the Defendant. The Plaintiff will get future interest on this sum at the rate of six per cent per annum from the date of the suit till satisfaction. The Plaintiff will get his costs from the Defendants in both the Courts.