

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
Ruttoo Sing v. Bajrang Sing and others, from
the High Court of Judicature, at Fort
William, in Bengal, delivered 4th April 1883.*

Present :

LORD BLACKBURN.

SIR BARNES PEACOCK.

SIR ROBERT P. COLLIER.

SIR ARTHUR HOBHOUSE.

In this suit the Appellant, who was the Plaintiff below, seeks to recover possession of land which he alleges to have been conveyed to him by one Girdhari Singh for the sum of Rs. 30,000 by a deed dated the 5th September 1871.

The Defendants below were Girdhari himself and the members of a family who are the Respondents in this Appeal. The Respondents allege that Girdhari, though registered as owner of the property in question, was a mere benamidar, and that they were and are the true owners and have been continuously in possession. As to the deed of September 1871, they allege that it is set up by one Thakoor Persad Sing, a connection of theirs by marriage, and that the Appellant is his servant and nominee. Girdhari filed a written statement, in which he supports the contention of the Respondents as regards the title to the property, and denies that he ever executed the deed of sale alleged by the Plaintiff, or received the consideration.

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Both the Courts below have found that Girdhari was a mere benamidar, and that the Respondents are the true owners and have been always in possession; and there is now no dispute on those points.

But the benamee transactions in this case have been elaborated with a perfection that is uncommon even in India, and in the opinion of the Subordinate Judge the Respondents, seeking to baffle their creditors, succeeded so well in making Girdhari appear to be the true owner of the property that he was able to make a title to strangers. He says,—

“ Everything has been done to proclaim to the world that Girdhari Sing is the owner of the properties; the title deeds have been executed in his name, the dakhil-kharij has been made and the butwara effected in his name, the Government revenue paid in his name, and receipts have been given to the ryots in his name. The Plaintiff was led by these declarations and acts to believe that Girdhari Sing was the real proprietor, and on this belief he purchased the properties for a valuable consideration.”

On these grounds he gave the Appellant a decree.

The High Court took a different view. They were not satisfied that Girdhari ever executed the deed of September 1871, or received the money. They therefore reversed the decree below and dismissed the suit, with costs. From their decree this appeal is presented.

It is obvious that when it has been shown that the alleged vendor is not the true owner, the Plaintiff can only rely on his claim as purchasing in good faith for value from a person who by the act of the true owners has become the apparent owner.

There has been some discussion as to the exact nature of the possession enjoyed by the Respondents, as to the duty of the Plaintiff to make inquiries, and as to his means of learning the truth. But their Lordships do not enter into this

discussion now, because they are of opinion that the Plaintiff, who was bound to give clear evidence that he paid money on the faith of Girdhari's title, has wholly failed to do so.

The story put forward by the Plaintiff is to the following effect: that the deed of sale was drawn by a scribe named Lokenath in Patna; that it was executed by Girdhari at Lokenath's lodging, in the presence of a great many persons, ten of whom are attesting witnesses; that it was taken by Girdhari himself to Barh to be registered; that after registration Girdhari brought it back to Patna; that the Plaintiff had got a lodging in Patna; that some four or five days after the execution the parties met at the Plaintiff's lodging to complete the transaction; that the purchase money was paid in silver, being counted and handed over to Girdhari in the presence of several witnesses; and that at the same time the most important title deeds of the property and a large number of receipts and village papers relating to it were handed over to the Plaintiff.

With respect to the execution of the deed, supported as it is by the registration and by the Plaintiff's possession of the documents, it is a matter of considerable difficulty to judge where the truth lies. The High Court examined the case very minutely, and came to the conclusion that the Plaintiff had not made out that Girdhari executed the deed. Their Lordships are not disposed to dissent, but they find it unnecessary to decide the question.

As to the payment of the money, the first observation is that the Plaintiff has not tendered his own evidence. This great blot in his case is not removed by the circumstance that Girdhari also has given no evidence. Girdhari is not the principal Defendant. The contest lies between the Plaintiff and the Respondents. Even if it

lay between him and Girdhari, it is he who has to prove, and to prove very clearly, the payment of the money to Girdhari. The non-appearance of a party in Court to support his statements may not have the same significance in India as in England. But in the first place there is nothing to show that the Plaintiff, whose occupations are described in the plaint as "zemin-dari banking and agriculture," is of a class who would shrink from appearing in Court. And in the second place the disinclination to appear, though it may abate or prevent suspicion of dishonesty, can in no way diminish the actual loss of evidence which is caused thereby.

The evidence of payment consists of the statements of four persons, who say that they were present when the money was counted and handed over. Their story is not entirely consistent, nor is it probable. One witness, Mosaheb Sing, says that Rs. 30,000 were paid. The others say that the sum paid was Rs. 29,000, and one of them, Bolak Sahu, says that he asked the Plaintiff why having purchased the property for Rs. 30,000 he only paid Rs. 29,000, and that the Plaintiff explained that he had previously paid Rs. 1,000 for stamp and other expenses. The stamp is only Rs. 200, and it is impossible to suppose that the other expenses can have amounted to a great many rupees. No explanation is given why the expenses of conveyance should fall upon the vendor. Nor is it likely that the vendor would consent to register the deed while the purchase money remained unpaid.

The qualifications of all the witnesses are very unsatisfactory. The most important of them is Mosaheb Sing, who says that he was the gomashta of Girdhari in 1871, and lodged with him at the time of the transactions deposed to. Of him the Subordinate Judge, who believed the story of the payment, has recorded that he always

evaded the answers in cross-examination, that he denied knowledge of facts evidently known to him, and that he appeared to be very partial to the Plaintiff. The other three witnesses had never before seen Girdhari, and were not confronted with him in Court. One of them, Bolak Sahu, says that at the meeting for signature of the deed, Girdhari introduced himself, and bade the witness mark that he was carrying on the transaction. Another, Karmun, says that the Plaintiff told them that it was Girdhari who was about to execute the deed of sale. The third, Lela, merely judged from the conduct and looks of the person who signed the deed that it was Girdhari. They knew no more of Girdhari's person at the alleged meeting for payment. None of them are Patna men. They belong to Gya, some 40 miles or so from Patna; and, as the High Court has observed, they all seem to have been casually present in Patna, where the Plaintiff picked them up to witness these important transactions.

The only other person specified as having been present is Ram Jiwan, who conducted this suit for Girdhari. He states in his examination-in-chief, "To my knowledge no deed of sale was executed on the part of Baboo Girdhari Sing. I did not receive any consideration money for Girdhari Sing." That is not very explicit. But the Plaintiff's counsel did not ask Ram Jiwan any question about the alleged payment of money in his presence.

Even if the witnesses had been speaking of events not intrinsically improbable, such evidence as this would be open to question. When the probabilities of the case are taken into consideration it will be found to be worthless.

How did the Plaintiff raise the sum of Rs. 30,000? We know little of his position, but he can hardly have had such a sum lying loose in his cash-box. Whatever means he took to raise

it, it must have been easy for him to show that it was done. Again, whether the sum paid was Rs. 30,000 or only Rs. 29,000, it is calculated that it would weigh above 700 lbs. avoirdupois. How did it get to the Plaintiff's lodgings in Patna? The Plaintiff's dwelling is some 40 miles from Patna. Was the silver conveyed that distance? Was it brought from a bank in Patna? The witnesses know nothing about it. They say it was brought "from inside" or "from the female apartments." But how did it get to the lodging? Much assistance must have been required in conveying so large a treasure, and nothing would be easier than to prove its transit by the bankers, the escort, the porters, and whoever was employed in supplying or conveying it.

The Plaintiff not only withholds his own evidence, which, if he is telling a true story, would be the most important of all, but he does not adduce a single one of the many persons who, again if his story is true, must have taken part in raising and conveying the money. Instead of taking that obvious course, he only puts forward the inconclusive, and as far as Mosaheb is concerned the wholly untrustworthy, testimony above described.

Whether the witnesses have combined to tell a false tale, whether a drama has been enacted to deceive some of them, or what else may be the real solution of the problem, their Lordships cannot tell. But one result is clear, which is that the Plaintiff, who must, if the payment were really made by him, have ample evidence to prove it, has not chosen to produce that evidence, and that his suit must therefore fail.

On the above grounds their Lordships will humbly advise Her Majesty to affirm the decree of the High Court, and to dismiss the appeal. The Appellant must pay the costs.
