Judgement of the Lords of the Judicial Committee of the Privy Council on the appeal of Musammat Thakro and others v. *Ganga Parshad from the High Court of Judicature for the North-Western Provinces, Allahabad; delivered December 14th*, 1887.

Present:
LORD FITZGERALD.
LORD HOBHOUSE.
SIR BARNES PEACOCK.
SIR RICHARD COUCH.

THIS is an appeal by Musammat Thakro and other ladies against Ganga Parshad, the Respondent. The appeal is from a decree of the High Court of the North-Western Provinces at Allahabad. The suit was brought by Ganga Parshad against Musammat Thakro, his mother, and the other ladies, who were the daughters of Musammat Thakro, in whose favour the mother had executed a deed of conveyance. The Plaintiff alleged that his father, Ganesh Singh "had a large property; that he, "on different occasions, by mortgage and private "and public purchase, having obtained Mauza "Shahpur Thator in his own name, as well "as in the name of Musammat Thakro, "Plaintiff's mother, himself remained in pos-"session thereof. Subsequently, in 1862 and "1863, the name of the said Musammat was "recorded in respect of the entire property in "the said mauza, though the said Ganesh Singh "continued in possession of it." He then alleged that on the 12th October 1872 Ganesh Singh executed a will, and "on the 17th "October 1872, died, and that Musammat

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" Thakro, Plaintiff's mother, continued to live
" with him (Plaintiff), and the village in dispute,
" like other paternal estates, remained under the
" management of the Plaintiff." Then he proceeded as follows: "On the 6th May 1878 the
" said Musammat Thakro executed a false deed of
" gift"—by which he meant a deed of gift which
she had not the power to execute—" of the said
" mauza in favour of her two daughters, Musam-
" mat Radha and Bhawani, describing the said
" mauza to be her acquired property and
" stridhan, and thus effected the Plaintiff's
" dispossession ever since the Musammat began
" to live separate, which is the time when the
" cause of action arose. The village in
" dispute being the acquired property of
" the Plaintiff's father, who had simply on
" account of affection caused the name of
" Musammat Thakro to be entered, the latter
" was not, under the Hindu law, competent to
" transfer the property to her daughters. The
" Plaintiff is, in every way, entitled to get the
" property. The Plaintiff therefore seeks for
" the following reliefs: (1) that the Plaintiff's
" right may be declared in respect of the
" disputed property, and the deed of gift
" executed on the 6th May 1878 by Musammat
" Thakro, Defendant, in favour of Musammats
" Bhawani and Radha, be declared invalid,
" void, and inoperative as far as the Plaintiff's
" right is concerned. (2) That both the last-
" mentioned Defendants may be dispossessed of
" the disputed mauza, and their right as donees
" declared null and void."

A written statement was put in on behalf of the ladies, and the case being tried by the Subordinate Judge, he raised several issues, the principal one of which was the fourth, "Whether
" Shahpur, the village in dispute, is wholly or
" partly the personal property of Ganesh Singh;

" and he alone remained in possession as long as " he lived, and since his death, the Plaintiff " remained in possession thereof till the date of " the accrual of the cause of action, and is there- " fore entitled to possession thereof; or the " village in question is wholly or partly the " personal property of Musammat Thakro, the " widow of Ganesh Singh, deceased, who has " been in possession thereof for more than 12 " years, and the Defendants are in possession " from the date of gift, and the Plaintiff's claim " is therefore barred by lapse of time and " he has no right in the property in dispute." Upon that the Subordinate Judge says:— " Just as the Defendants have not proved their " assertion, so the Plaintiff also has not proved " that Ganesh Singh fictitiously transferred that " amount of land of the village of Shahpur " Thator which was in his name to Musammat " Thakro." The question really was, whether, when the mutation of names was made from the name of Ganesh into the name of his wife, it was his intention to transfer the property into the name of his wife benami for him. The Subordinate Judge upon this point says:— " In short, a careful consideration of all the " oral and documentary evidence and pre- " sumptions and probabilities clearly leads the " court to infer that the whole of the village in " dispute is the property of Musammat Thakro, " and is not the estate left by Ganesh Singh, and " that up to the date of the deed of gift in " question it remained in her possession." The Subordinate Judge therefore found in substance that the mutation of names in 1862 was not for the purpose of putting the property into the name of the wife benami for the husband, but for her own benefit.

Upon appeal to the High Court that court

came to a different conclusion. They held that the property was put by the husband into the name of the wife to hold it benami for him, and that consequently the property remained the property of the husband, and that the wife had no power to assign it to her two daughters, although it stood in her name.

A considerable part of this property, as shown by the Subordinate Judge in his judgement, was purchased in the name of Ganesh, the husband, and certain other parts in the name of the wife. The wife gave evidence that that portion of the property which was purchased in her name was purchased for her benefit and with her own money. It is unnecessary to decide whether the part of the property which was purchased in the name of the wife was purchased with her money or with that of her husband, because even if the property which was purchased in the name of the wife was the property of the husband, as well as that which was purchased in his own name, the question still remains whether when the husband allowed the mutation of names from his name into the name of his wife, he intended that mutation to operate for his own benefit or for hers.

The wife in her evidence in the cause stated that in the year 1847, when the husband was about to marry a second wife, that portion of the property which had been purchased in the name of the husband was made over to her in consideration of his being about to marry a second wife, and that afterwards the other portions of the property were bought in her name, so as to make the whole her property.

In the Mitakshara, section 11, clause 1, speaking of the nature of *stridhan*, it is thus stated. " What was given to a woman by the father, " the mother, the husband, or a brother, or " received by her at the nuptial fire, or pre-

" sented to her on her husband's marriage " to another wife, as also any other separate ac- " quisition, is denominated a woman's property." It is not unusual for a husband, upon his being about to marry a second wife, to make a present to his first wife, and if he does so, the property so presented becomes her stridhan according to the doctrine above laid down. The wife says, that in the year 1847, when the husband was about to marry a second wife, he did make her a present of the property which had been purchased in his own name. Although the High Court has found that there was no actual proof of that fact, it is not improbable that the husband, when about to marry a second wife, should have stated to his first wife that he would appropriate that part of the property which he had purchased in his own name as a present to her in consideration of his being about to marry the second wife. The statement of the wife is corroborated by the fact that in the year 1862 he caused the property to be changed from his own name into that of his wife. On the 4th March 1862 he says: "In partnership with my wife, Musammat " Thakro, I am the lambardar and a share- " holder of Mauza Shahpur Bhatai, Pargana " Gori. Now, of my own free will, I pray " that my name as sharer in the said mauza " be expunged, and that of the said Musam- " mat alone be entered as proprietor of both " the shares, as the village administration " paper is being written now. I have no longer " any claim." If when he was about to marry the second wife he told his first wife that he would make her a present of the property and did not carry out the gift by an actual deed, and in 1862 caused a mutation of names declaring that he had then no longer any claim to the property, that would not show that he was

causing the mutation in order that the wife might hold it benami for him. There was a complete mutation of names from the husband of all that he possessed in the village of Shahpur into the name of the wife. The subsequent purchases were made in the name of the wife. If he intended the subsequent purchases, though made with his own money, to be made in the name of his wife, the probability is that he intended the whole of Shahpur to be vested in her as her *stridhan*. The Plaintiff claims it as his own property. It is to be remarked that by the second wife his father had another son, Dip Chand. If the property had been transferred in 1862 into the name of Thakro, benami for the father, it would have remained the father's property, and being the father's property would have descended to his two sons. But the Plaintiff does not claim it as being the property of the two sons. He claims it as his own property, and as having been put into his mother's name in order that he might become entitled to the benefit of it; not that it was put into his mother's name in order that it might be held by the mother benami for the benefit of the father.

Several documents were put in. There is a copy of a petition "by Ganga Parshad against Musam-" mat Thakro, his mother, and Musammats Radha " and Bhawani, his sisters." That was dated in 1878, after the mother had executed the conveyance in favour of her daughters. In paragraph three he says:—"The Appellant's father caused " the name of Musammat Thakro, mother of " the Appellant, to be entered in respect of the " property through some policy. The name of the " Appellant's mother was entered simply with a " view that the children born of the other wife " of the Appellant's father might not get a share " in this property, and that the Appellant alone

"might get it." The father, when he made this transfer of Shahpur into the name of the mother, did not appear to have had any creditors or any particular reason for putting this portion of his property into the name of the mother instead of allowing it to remain in his own name, unless it was for the purpose of giving the mother a benefit. If he had intended to put the property into the hands of the mother in order to conceal it from his creditors, and to make it appear that it was his wife's property instead of his own, the probability is that he would have done the same with regard to his other property, and not only in respect of this particular village.

The representation on the part of the Plaintiff shows that whatever the object of his father in making the mutation was, it was not to put the property into the hands of the mother to hold it benami for the father. If he had put it into her hands with that object the two sons would have become entitled to it, but the case of the Plaintiff is that the object of the father in putting it into the name of the mother was that the issue of the second wife should have no share in it.

Further, a petition of guardianship was put in evidence. It was an application by Ganga Parshad, the Plaintiff. He there says: "My father, "Ganesh Singh, died in October 1872, leaving "two sons, *i.e.*, myself and Dip Chand, a minor" —that is the son of the second wife—"who is "now 2½ years old, as his heirs, and we two "sons of the deceased are owners in equal shares "of the property left by him." If the property remained the father's, Shahpur, as well as all the other properties, would have been the joint property of the two sons, Dip Chand and himself, but in a schedule to the petition particularising the property which his father left, he excluded

Shahpur. That was either a gross fraud upon his brother, whose guardian and trustee he then was, with the intention of causing it to be believed that Shahpur, which was held as he alleged by his mother for the benefit of his father, was not the property of his father, or he must have believed at the time that the property was put into the hands of the mother, not benami for the father, but for some other purpose. He afterwards filed a list of the property left by his father, in which Shahpur is excluded, which shows that there was no mistake in the omission of Shahpur. In both these documents Shahpur is excluded as property left by the father, which if left by the father would have belonged to himself and his brother. In his evidence, he says: "I know and con-" sider Shahpur Bhatai to be my own share " and not of Dip Chand." In the face of these statements he cannot now contend that the property was held by his mother benami for his father. He contended at one time that the property was put into his mother's name benami for himself. If that were so it was for him to prove the fact, which he was unable to do.

Looking at the conduct of the Plaintiff and at the representations which he made, which would have been grossly fraudulent if the property had been in the mother's name benami for the father, their Lordships have come to the conclusion that the case of the Plaintiff is not made out, viz., that the property was put into the hands of the mother benami for the father. Their Lordships do not believe that it was put into the hands of the mother for the purpose of giving the Plaintiff the sole interest in the property, or that it was put into the hands of the mother benami for the father.

Under these circumstances their Lordships think that the High Court came to an erroneous

conclusion in reversing the judgement of the Subordinate Judge upon the fourth issue, in which he found, upon the evidence and upon the statements of the Plaintiff that the property was the property of Thakro and not the property of the Plaintiff. The Plaintiff even in his plaint does not state that the property was that of himself and Dip Chand, but claimed it as his own property. Dip Chand was no party to the suit, as he ought to have been if the property was that of the father.

Their Lordships will therefore humbly advise Her Majesty that the decree of the High Court be reversed and the decree of the Subordinate Judge affirmed, and that the Respondent be ordered to pay the costs of the appeal to the High Court. The Respondent must also pay the costs of this appeal.

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