

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Ganga Bakhsh and another v. Jagat Bahadur Singh, from the Court of the Judicial Commissioner of Oudh, Lucknow; delivered 27th July 1895.

Present :

LORD WATSON.

LORD MORRIS.

SIR RICHARD COUCH.

[Delivered by Sir Richard Couch.]

The suit in this case was brought by Sheopal Singh, who is now represented by the Respondent, against Sarabjit Singh, the father of the Appellants, who are his legal representatives. It sought to have a deed of gift executed by Sheopal on the 7th of August 1886 declared to be illegal and null and void, and to have a decree for possession of the property given by it. The facts which led to the execution of the deed are these. The villages, a share of which is the subject of the deed, were formerly the property of Sheogolam Singh, who died in the year 1854 or 1855, leaving a widow, Mussumat Golab Kunwar, surviving him. He had one son, Bikramjit Singh, who died childless in 1843 or 1844, leaving a widow, Umrao Kunwar, surviving him. On the death of Sheogolam Golab Kunwar succeeded to the estate by right of inheritance, and on her death in 1882 or 1883 Umrao Kunwar took possession of it, and kept possession until her death on the 13th of June 1886. On the death of Golab Kunwar the

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persons entitled to the estate, as the heirs of Sheogolam, were Sheopal Singh and Jagpal Singh, the only surviving sons of his paternal uncles, Sheopal being by custom entitled to a 9 annas 1 pie share, and Jagpal to the remaining 6 annas 11 pies share. They had made no claim during the life of Umrao, but on her death they became claimants. Their right to succeed was disputed by two claimants, one, Bhagwant Singh the younger brother of Sarabjit (he and Sarabjit being sons of a brother of Sheopal) who alleged that he was the adopted son of Sheogolam, which if true would have entitled him to succeed in preference to Golab; the other, Kashi Bakhsh, the great grandson of another brother of Sheopal, who set up that he had been adopted by Umrao Kunwar. The claim of Bhagwant was supported by Sheopal, and that of Kashi Bakhsh was supported by his natural uncle, Rajah Sukh Mungal Singh, who had been adopted out of his family into the family of the Rajah of Shamaria and was a man of considerable wealth and influence. On the death of Umrao the Rajah had taken possession on behalf of his nephew of one of the villages, and Kashi Bakhsh had applied for mutation of names in respect of all the villages. In consequence, apparently, of this, on the 6th of July 1886 a letter was sent by Sarabjit to Sheopal in which he says:—

“ The first step to be taken should be this that you should post two men of your own. Let them stay where his men are staying. Do not let it be without your men, otherwise you will lose your right. When Mir Sahib comes to Bareli I shall arrive there on marriage party's return. I shall then write full particulars. The suit which will be instituted in Court will be filed in your name and not in my name. Everything else is all right.”

Sheopal in his reply the next day to this letter, after saying he had sent two more men, said:—

“ Whatever steps you take and arrangements you propose to make in this matter those will be done.”

On the 4th of August 1886 Mir Hashim Ali, the Mir Sahib in the letter of the 6th of July, wrote to Sheopal :—

“ Further I have heard that you are in Chandapur. The work that has to be done cannot be performed without your coming to Bareli for a day. And delay is injurious. No doubt it will cause you inconvenience, but you must take this very route to Bareli, and staying a day at Bareli you may go to Miramau. Without your coming everything is at a standstill. When you come here other particulars will be communicated to you verbally.”

Accordingly Sheopal went to Bareli, and on the 7th of August the deed which is the subject of the suit was executed by him, and was registered on the same day, the execution of it being admitted by him to the Officiating Registrar.

The deed, after stating the possession by the widows and their deaths, proceeds :—

“ Under the present circumstances, according to the Hindu Law, Jagpal Singh son of Pancham Singh and myself being near in consanguinity are the only heirs and proprietors of the estate left by Sheogholam Singh and by virtue of *jithansi* right existing in the family my share out of 16 annas comes up to 9 annas 1 pie and that of Jagpal to 6 annas 11 pies, but at present Kashi Bakhsh Singh son of Sheoratan Singh has with the aid of his uncle Rajah Sukhmangal Singh Talukdar of Shahmau taken possession of the house of Sheogholam Singh situate at Sheogarh, hamlet of Pura Chetai, and appropriated all goods and chattels, and he has also commenced to interfere with the proprietary right and share of the said Sheogholam Singh in the villages” (naming ten villages) “ And whereas I have got no means wherewith I could take legal proceedings and defray the suit expenses. Moreover it is also within my knowledge that Sheogholam Singh had during his lifetime expressed his intention of making Bhagwant Singh son of Babu Raghunath Singh who is my brother’s son, his heir and successor, hence it is also my desire that this property should either through my right of inheritance or through that of Bhagwant Singh remain in the family of my brother Babu Raghunath. Wherefore I have hereby gifted away my rights (in property) detailed below worth about Rs. 15,000 to my nephew Babu Sarabjit Singh son of Babu Raghunath Singh.”

The plaintiff alleged that the Defendant, as well as his councillors and legal advisers, taking advantage of the Plaintiff’s old age and of his

illness and disqualifications, separated him from his son's relatives and advisers, and induced him to sign the deed and have it registered, and that he was not aware of its effect and contents. The third issue settled by the District Judge is :—

“ Whether the deed of gift has been executed without undue influence and fraud, with free consent and in consideration of love and obligations and as a matter of foresight, or was it executed by the donor in his old age and illness and under coercion and undue influence and without consideration ? ”

The Plaintiff examined two witnesses, Prag Din the Defendant's dewan, and Hashim Ali. The Defendant examined four witnesses, one being the Officiating Registrar who registered the deed. The Plaintiff was examined in support of his case. He deposed that on receipt of the letter he came to Rae Bareilly and put up at the bungalow of Mir Sahib (Hashim Ali); that on the third day the Mir Sahib prepared a draft :—

“ At first the subject of writing was talked of; thereafter the draft was prepared; Sarabjit Singh asked me to sign the draft. I did not know what was written in that draft. I was under the impression that the document was being written for my sake. Mir Sahib and Sarabjit Singh had told me that it was being written for my ‘*marammat*’ (repair) again said for my ‘*madad*’ (assistance), and that it had been written about the property in Baheliagarh for me. I have not given away the property in Baheliagarh to Sarabjit Singh. By Baheliagarh I mean all the ten villages viz. . . . I signed the draft because I had confidence in Sarabjit Singh and Mir Sahib. This draft was written at the bungalow where Sarabjit Singh had been living. There was no pleader or agent of mine present there nor was my son or grandson.”

About the registration he said :—

“ At the Registrar's house I signed the deed. Sarabjit Singh had told me to sign the document at the Registrar's house The Registrar neither read out the document, nor explained its purport to me.”

The findings of the District Judge and the Additional Judicial Commissioner, hereafter noticed, make it unnecessary to refer in detail to the evidence of the witnesses. It was in substance, that when the question of making an

application for mutation of names in opposition to Kashi Bakhsh was discussed, Sheopal was afraid of having a contest with the Rajah and said he could not bear the expenses; that "he had no means wherewith he could cope" with the Rajah; that he did not like the application to be made on his behalf; and that Sarabjit Singh should make the application in his own name. His object appeared to be that he might be saved from the contest with the Rajah and the costs of the suit. Thereupon the deed was prepared under the direction of Hashim Ali, the purport of it having been first explained to Sheopal. It was read over to him before he signed it, and he asked that "provision should be made in it to save him from the costs of litigation whether the case might succeed or fail." The Officiating Registrar deposed that he read the document to Sheopal from beginning to end, and explained the meaning of it, and that after he had given his assent and verified the execution it was registered. The District Judge did not believe the Plaintiff's statement of his ignorance of the contents of the deed. He found that the evidence of the witnesses satisfactorily established that Sheopal was fully aware of the contents of the deed, and with full knowledge caused its completion and registration. He also held "that there was no undue influence, no confidential connection and no want of consent." He decided the issue in favour of the Defendant and dismissed the suit. The Plaintiff appealed and the appeal was decided by the Additional Judicial Commissioner. In one part of his judgment he says:—

"I have no hesitation in saying that Sheopal Singh could understand the contents of the document."

In another part he observes:—

"I am convinced that the Plaintiff was fully aware of the nature of the deed that he signed and that he so signed voluntarily and without any pressure."

Then he says :—

“ Was the transaction an equitable one which the Courts should not enforce, seeing that it was without consideration and for property of a large value, that is, worth Rs. 15,000? I allude to Sheopal's 9 annas 1 pie share only. Was Plaintiff badly advised by Babu Sarabjit Singh and Hashim Ali, and was it their duty, considering the relations in which they stood to him, to dissuade him from divesting himself of the property?”

Whether the transaction was an equitable one which the Court should enforce was not what he had to decide. The Defendant was not asking the Court to enforce the deed and the reason why the gift was without consideration was explained by the circumstances. In fact, if the witnesses were believed, Sheopal regarded himself as inheriting a lawsuit from which he wished to be relieved. He parted with what he did not consider to be of any value. The passage in the judgment last quoted is immediately followed by :—“ I say at once that the transaction was not a wise one judging from subsequent events.” Their Lordships must express their surprise at the Additional Judicial Commissioner saying this and apparently acting upon that view. He alludes to the opposition of Kashi Bakhsh, and says he failed to obtain mutation of names and then his opposition ended. Whether the transaction was one that should be set aside as inequitable would depend upon the circumstances at the time when it was made, not upon subsequent events. Their Lordships think that the following passage in the judgment of the Additional Judicial Commissioner further on correctly states the facts as proved :—

“ Again it may be fairly assumed that the question of cost was a serious consideration to him” (Sheopal). “ He had good reason to expect that whatever the final result, he would have a determined opponent in Rajah Sukhmangal Singh, and that the latter would not hesitate to spend all that was necessary in the interest of his nephew Kashi Bakhsh. As a matter of fact the expenditure even over the

“ question of mutation in the Revenue Courts was very heavy
 “ on either side, and there was of course the contingency of
 “ a much heavier outlay, if the defeated party brought a civil
 “ suit. Had Sheopal Singh carried on the contest from first
 “ to last with his own money only and eventually lost, he
 “ would have been well nigh, if not quite ruined, while if he
 “ won, it is certain that the costs awarded by the Courts
 “ would fall very short of those actually incurred. I think
 “ there can be no question that Sheopal Singh had all these
 “ considerations in his mind when he executed the deed,
 “ and therefore after transferring his rights to Sarabjit he
 “ significantly adds, ‘Babu Sarabjit Singh will have to suffer
 “ ‘ the loss or enjoy the profits accruing on obtaining the gifted
 “ ‘ property. I have no concern whatever.’ ”

Later in the judgment it is said :—

“ I must accept the evidence as giving a substantially
 “ accurate version of what really occurred.”

Their Lordships would have expected that the Additional Judicial Commissioner upon this view of the evidence would have affirmed the decree of the District Judge. On the contrary he reversed it and gave the Plaintiff a decree for possession of the 9 annas 1 pie share. Their Lordships have considered his reasons for this decision and do not think them sufficient.

It does not appear that unsound advice was given by Sarabjit or Hashim Ali, or that confidence was reposed in them by Sheopal so as to bring the case within Section 16 of “ The Indian “ Contract Act, 1872,” which was relied upon in the argument for the Respondent. There is only Sheopal’s statement that he had confidence in them, which is not sufficient proof of it. Their Lordships will therefore humbly advise Her Majesty to reverse the decree of the Additional Judicial Commissioner, to dismiss the appeal to him with costs, and to affirm the decree of the District Judge. The Respondent will pay the costs of this appeal.

