

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
Prince Suleman Kadar Bahadur v. Nawab
Mehndi, from the Court of the Judicial Com-
missioner for Oudh; delivered 8th December
1897.*

Present :

LORD WATSON.

LORD HOBHOUSE.

LORD DAVEY.

SIR RICHARD COUCH.

[*Delivered by Lord Davey.*]

The Appellant is a son of the late King of Oudh. The Respondent is his wife. They were living together in the year 1875 but in the year 1886 they separated and they have since lived apart. By a mortgage bond dated the 10th May 1870 two ladies mortgaged certain houses and lands to the Appellant to secure Rs. 8,500 with interest at the rate of 8 annas per cent. per mensem for a stipulated period of five years. Nothing was paid by the mortgagors on account of either principal or interest and on the 14th May 1875 a sale deed of the mortgaged property was executed by the mortgagors whereby after reciting the mortgage and that the mortgagors had not been able to pay anything up to date and that according to accounts it appeared that they had then to pay to the Appellant the sum of Rs. 11,000 on account of principal and interest it was witnessed that the mortgagors sold the mortgaged property in lieu of Rs. 11,000 to the Respondent and that the mortgagors having

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received the purchase money in full from the said vendee had paid it to the Appellant in liquidation of the debt due to him under the deed of the 10th May 1870. It appears from the endorsement on the sale deed that a further sum of Rs. 250 was paid in cash to the mortgagors and this sum seems to have found its way back into the hands of the Appellant's then agent.

The question on this appeal is what the transaction recorded in this sale deed really was. The Appellant contends that the sale deed was executed *ism farzi* (fictitiously) in the name of the Respondent and that he was the real purchaser and assumed proprietary possession of the property comprised in the deed. The Respondent on the other hand alleges that she purchased the property in suit with her own money and has ever since been in adverse proprietary possession thereof.

The burden of proof is in the first place upon the Appellant who claims against the tenor of the deed. He states in his evidence that the consideration for the sale was the mortgage money plus interest and the sum of Rs. 250 which he says that he paid through his then agent one Achche Sahib and again that the mortgage money was not recovered in cash but formed part of the consideration. The substance of his evidence is that no money passed in the transaction except the Rs. 250. He accounts for the production of the title deeds by the Respondent by saying that they were in the custody of Achche Sahib who was formerly his agent but had been dismissed and who was prior to and at the time of the suit acting exclusively for the Respondent. He further says that Achche Sahib advised him to have the sale deed in the name of the Respondent in consequence of some threatened litigation. The Appellant's evidence is confirmed by that of

Kirpa Ram and Maharajah Tej Krishna Sahib who were relatives of the vendors and negotiated the transaction on their behalf. They both state that the consideration was not received in cash except as to the Rs. 250 which was taken back from the vendor's agent by Achche Sahib and that the sale deed was executed in the name of the Respondent by the orders of the Appellant. The evidence of the vendors who were both Purdah ladies is less precise but to the same effect.

It is apparent from this evidence and indeed it is not denied that no money in fact passed from the nominal purchaser to the vendors and from the latter to the mortgagee and that the narrative of the deed is not therefore in accordance with the facts. The effect, and doubtless the object, of the deed is to make it appear that the consideration to the vendors for the sale proceeded to them from the Respondent, so as to give her an apparent title for value, whereas the real consideration to the vendors being the extinction of the mortgage debt, which was the property of the Appellant, proceeded from him. Their Lordships think that this circumstance and the other evidence of the Appellant and his witnesses are sufficient to call upon the Respondent for an answer and to shift the burden of proof upon her. This burden she may discharge by showing that the purchase money though not paid by her to the vendors, was paid to the Appellant out of her moneys or by evidence of continuous possession in accordance with the deed. The Respondent was called as a witness by the Appellant. In her evidence she states as follows:—

“ My husband told me that there was no use
 “ in keeping money, that he had a house in
 “ mortgage which I should buy, that it was very
 “ cheap that I will get rents and that it will be

“ sold for Rs. 11,000. I told him that he should
 “ speak to my aunt (Ammi Jan) if she accepts
 “ I will accept. The Plaintiff then spoke to her
 “ and she consented. Thereupon I also consented.
 “ Then the Plaintiff told my aunt that the Rani’s
 “ mukhtar had come and if she (my aunt) gives the
 “ money the Plaintiff will make arrangements for
 “ the purchase. Thereupon my aunt sent Rs. 10,000
 “ in cash with the Plaintiff and asked Achche Sahib
 “ to send for the remaining Rs. 1,000 thereafter.
 “ This Rs. 10,000 belonged to me and was kept
 “ in deposit with my aunt. Then I sent Agha
 “ Nawab my mukhtar who got the deed executed.
 “ The Plaintiff got the remaining Rs. 1,000 from
 “ Achche Sahib. The latter paid the money on
 “ my behalf as my mother had told him to pay.
 “ Then Agha Nawab got the deed of sale duly
 “ executed and registered and then gave over to
 “ me the said deed of sale as well as the mort-
 “ gage deed. Agha Nawab took Rs. 250 more
 “ from me which he said the Plaintiff had told
 “ him to pay to Kirpa Ram mukhtar of the
 “ Rani. Since purchase the house in dispute
 “ has been all along in my possession
 “ The above facts were known to Agha Nawab
 “ Mirza Muhammad Daroga Achche Sahib
 “ Saiyid Mustafa and others whose names I
 “ cannot recollect. When my aunt
 “ paid the money to the Plaintiff I was sleeping,
 “ when I got up my aunt told me that she had
 “ paid the money and Taijan Mahaldar told
 “ me that she had carried the money with the
 “ Plaintiff.” Achche Sahib states he was told
 that Rs. 1,000 was short and was asked to pay
 it and paid it to Taijan Mahaldar and so far he
 confirms the Respondent’s evidence. He further
 states that he did not see the price Rs. 11,000
 paid. Achche Sahib however was a dismissed
 servant of the Appellant. He says he resigned
 the Appellant’s service because the Appellant

gave him orders to oppress the Respondent and he is now the agent of the Respondent and was made a Defendant in the Appellant's suit for restitution of conjugal rights. The District Judge described him as "a most shifty and unsatisfactory witness." On the other hand the Respondent did not call as witnesses her aunt, her mother, Taijan, Agha Nawab, or Saiyid Mustafa and there is no explanation of their absence. Nor were any questions addressed to the Appellant in cross-examination with a view to showing that money was paid to him by the Respondent's direction or on her behalf. There is therefore no real corroboration of the Respondent's evidence and their Lordships cannot accept her evidence as reliable proof that any money was paid by her either to the vendors or the mortgagee on their account.

The evidence as to possession is vague and unsatisfactory on both sides. The balance perhaps inclines in favour of the Respondent but in the opinion of their Lordships there is not such an amount of possession proved as to affect the question either way.

Their Lordships will therefore humbly advise Her Majesty that the order appealed from be reversed and instead thereof an order be made dismissing the Respondent's appeal to the Court of the Judicial Commissioner with costs. The Respondent will pay the costs of this appeal.
