

Ruhulla *alias* Hakim Hamad and others - - - - *Appellants*

v.

Hassanalli Degumia - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 18TH MAY, 1928.

Present at the Hearing :

LORD SHAW.
LORD CARSON.
LORD ATKIN.

[*Delivered by* LORD ATKIN.]

The plaintiff in this case claims as mutawali under a deed of wakf by which the settlor, one Asha Begum, a pardanashin lady now deceased, disposed of property of the value of about Rs. 20,000 on the terms that five-ninths of the income should be applied for the benefit of a mosque founded by her grandfather and four-ninths of the income should be applied for the maintenance of the mutawali, who was to be herself during her lifetime and on her decease the plaintiff, who was her maternal uncle. The defendants are the lady's husband and her nearest agnate and some tenants of the property. The suit is for possession. The execution of the deed is not in question. It is, however, undisputed that in the case of a disposition of property by a pardanashin lady an onus is cast on the person relying on the disposition to establish that the transaction is one which the disponent thoroughly comprehended and deliberately and of her own free will carried out. After a trial in which the Subordinate Judge decided in favour of the defendants, the High Court, on appeal, ordered a new trial directing an issue in the terms mentioned above. The second Trial Judge who had succeeded the first heard further evidence and found for the defendants, and on appeal his

decision was reversed by the High Court, who entered judgment for the plaintiff. As has been said, there is no dispute as to the law, and it may be said that where as in this case the pardanashin lady is illiterate, the Court will be especially alert to see that the burden cast on those supporting her dispositions is satisfactorily discharged. But after a careful consideration of the circumstances disclosed in the evidence in the present case, their Lordships are of opinion that the decision of the High Court should not be disturbed. Asha Begum, at the date of the deed in question, was a lady of between thirty and forty years of age. She had been married some years before to the first defendant (now deceased and represented by his heir), but had only spent one night in his house, and had then returned to her father's house. Her father, Nanumia, in 1912 had given her the property in question, and had subsequently managed it under a power of attorney. He died in 1914. He was on bad terms with his own relations. The plaintiff was Asha Begum's maternal uncle; he appears to have maintained affectionate relations with her, and to have advised her as to her health, which was bad. In 1912, shortly after the deed of gift, the father appears to have prepared a document under which his daughter records that before the gift she and her father had agreed that if she had no children the property should be sold and the proceeds applied to religious uses at Mecca and Medina in equal shares. It appears that in 1917 she was minded to carry out the wishes of her father. Evidence was given by the witness Nagardas, a friend of the family, that he was consulted by the lady, that he advised her that to sell the property might involve a loss, that there would be difficulty in remitting the money to Mecca and Medina, that a mosque at Broach bore her grandfather's name, and that the wakf might properly be made in favour of that mosque. The question of reserving part of the income for her maintenance was discussed, and the lady at that time decided to give nine-sixteenths to the mosque and retain seven-sixteenths for herself. A writer was sent for, a draft prepared, and eventually the document in question was executed and attested and duly registered. There is some discrepancy between the witnesses (by no means suspicious in the circumstances of delay between the date of the transaction and the date of the respective trials) as to the precise times which elapsed between the various stages of completion and the varying proposals which ultimately took shape in the deed. But there was abundant evidence that two drafts at last came into existence, that they were read over to the lady, and that she understood them. There was evidence that after the execution of the deed she made an application to be registered as owner in her representative capacity as mutawali and not as heretofore absolutely, and that she took from one of the tenants a renewal as mutawali. The transaction appears to their Lordships, as it did to the High Court, a very natural one for the lady to contemplate. As far as it devoted part of the income

to religious uses it carried out her father's wishes. That it reserved a share for maintenance of herself is certainly not a suspicious circumstance. That the plaintiff and members of his family in succession to him should benefit by being appointed mutawali on her death appears in the circumstance to be again a very natural provision. Nor does the defendants' case in this respect appear to be strengthened by the fact that the lady about the same time by will devised the rest of her property to the plaintiff's son. The will appears to be unchallenged. She had no reason to benefit her husband; neither her father nor she appears to have been on friendly terms with her agnatic relations. Moreover, it is intrinsically improbable that anyone would attempt to procure the execution of such a document as the deed in question without the settlor's knowledge of its contents. The deed was to take effect at once; one of the witnesses present at its execution, Nijamuddin, was an existing mutawali of the mosque which was to be benefited. The income disposed of to the mosque was about one-fourth of her total income, and it would be unlikely that she would not speedily become aware of that diminution of her not very considerable income. There is, then, a disposition which the lady had every motive to make, benefiting natural recipients of her bounty, disputed by persons who in the circumstances had no claims upon her, and there is a body of evidence that she knew and approved of what was being done. While it is important to maintain the principles of law laid down for the protection of pardanashin ladies, it is also important, as expressed in the judgment of this Board in *Kali Baksh Singh v. Ram Gopal Singh* (1913) 41 Ind. App. at p. 31, not to "transmute such a legal protection into a legal disability."

The defence raised in the Court below and negatived by the High Court that the deed was executed by the settlor during her death illness was abandoned before the Board. Their Lordships will humbly advise His Majesty that the appeal be dismissed with costs.

In the Privy Council.

RUHULLA *alias* HAKIM HAMAD AND OTHERS

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HASSANALLI DEGUMIA.

DELIVERED BY LORD ATKIN.

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