

Privy Council Appeal No. 19 of 1931.

Oudh Appeal No. 6 of 1930.

Nawab Sultan Begum and others - - - - - *Appellants*

v.

Nawab Qamar Ara Begum - - - - - *Respondent*

FROM

THE CHIEF COURT OF OUDH AT LUCKNOW.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 28TH MARCH, 1933.

Present at the Hearing :

LORD THANKERTON.

SIR JOHN WALLIS.

SIR LANCELOT SANDERSON.

[*Delivered by* LORD THANKERTON.]

This is an appeal from a decree of the Chief Court of Oudh, dated the 6th November, 1929, which varied a decree of the Court of the Subordinate Judge of Lucknow, dated the 23rd May, 1928.

The respondent instituted the present suit on the 29th March, 1928, for partition of the estate left by Nawab Abida Begum, a Shia Mahomedan lady, who died on the 25th September, 1924, aged about 80 years, and leaving three step-sisters as her heirs. The respondent is the grand-daughter of one of the three sisters, since deceased, and she claims one-third of the estate left by Abida Begum.

The appellants are defendants in the suit. Appellant No. 1 is the purchaser of the right title and interest of the two other sisters of Abida Begum in her estate, and, as such, is entitled to two-thirds thereof. The remaining appellants are the husband and children of appellant No. 1. The appellants hold several properties which are claimed by the respondent to belong to the estate of Abida Begum.

Abida Begum was twice married but had no children. Her first husband died in 1889, and she inherited part of his wasika, or government pension, which brought her Rs. 293-10-2 per month. On her mother's death in 1894, this pension was increased to Rs. 542-14 per month, and in 1910 it was again increased to about Rs. 800 per month, which she drew up to her death. In 1898, under the compromise of a decree that she had obtained for her dower and her one-fourth share of her first husband's estate, she received Government Promissory Notes for Rs. 26,000 and Rs. 5,247 cash, in addition to certain moveables which she had taken in part satisfaction of her decree.

About 1894 Abida Begum married Abid Husain Khan, by a *muta* marriage, as her second husband. He was also a Shia Mahomedan and a widower, having two daughters, Fatima Begum and Sultan Begum (appellant No. 1), then aged about six and four years respectively. Abid Husain had been the salaried medical attendant of Abida Begum's first husband. Abid Husain died on the 22nd November, 1910, leaving as his heirs his two daughters, his mother Jafri Begum, and his widow Abida Begum. It may be added that in 1902 appellant No. 1 had been married to appellant No. 2, who was the grandson of Abida's only brother, who had predeceased her, and that appellants Nos. 1 and 2 continued to live in family with Abida Begum until the latter's death.

As regards Abida Begum, there can be no doubt that she remained a capable woman up to the date of her death, that she allowed Abid Husain to manage all her affairs from after her first husband's death until his own death, and that she had a devoted affection for both appellants Nos. 1 and 2 and for their children. The learned Judges of the Chief Court state, "We do not believe that she was of commanding intellect or of great business capacity, but the evidence shows to us that she was a lady of an intellect as high as the intellect of most ladies of her birth and of her upbringing and that she preserved her faculties to a somewhat surprising extent to the date of her death The conclusions which we draw from the facts here are that Nawab Abida Begum was at the time of her husband's death of intellectual capacity greater than that possessed by most of the ladies of a similar position to her own, that she was very devout, spending her time largely on religious observances, that she had certain literary tastes which were connected with her religion (her poems were religious) and that she, a childless woman, lavished her affection upon the daughters of Abid Husain. She further showed kindness to other members of his family, having Jafri Begum, her husband's mother, to live with her and on the evidence treating his other relations with great consideration. She appears to have been a woman singularly disinclined to extravagance. She seems to have lived well within her income. We shall discuss later what became of her savings. She clearly was

not a woman who wasted her money. On the other hand, she husbanded her resources. She lived modestly in a house which had not cost a great deal of money and was apparently happy in the exercise of her religious duties and in the society of her favourite Sultan, Sultan's husband and Sultan's children." In substance this agrees with the conclusions expressed by the Sub-ordinate Judge, and their Lordships accept it as correct.

The properties in suit consist of (1) properties in respect of which Abida Begum had executed deeds of transfer in favour of Abid Husain or his heirs, (2) properties purchased by Abid Husain, the sale deeds being in his favour, and (3) properties acquired in the name of appellant No. 1 or appellant No. 2, or their children. The main case for the respondent, as plaintiff, was that Abida Begum was an old and imbecile woman of weak intellect, who was entirely under the influence of Abid Husain, and appellants Nos. 1 and 2, and that they thus obtained the transfers under head (1) and the use of her monies for the acquisitions under heads (2) and (3). The main case in defence was that the properties had been acquired by Abid Husain and appellants Nos. 1 and 2 out of their own monies, and a denial of the alleged incapacity of Abida Begum or the exercise of any undue influence by them.

The questions raised in this appeal relate only to four properties and rest upon a somewhat changed basis of argument on both sides.

As would be inferred from what has been already stated, the respondent's case of incapacity and undue influence has been rejected by both Courts, and further it has been held that the respondent is precluded from claiming any of the properties acquired by Abid Husain because of the action of Abida Begum in accepting, as widow and an heir of Abid Husain, her share in the partition of Abid Husain's estate, these properties being included as forming part of that estate, although it seems clear enough that the monies used for the purchases belonged to Abida Begum.

The four properties remaining in dispute are (a) War Loan Certificates of the face value of Rs. 24,000, purchased in the name of appellant No. 1 in May, 1917, at a cost of Rs. 22,800; (b) War Bonds of the face value of Rs. 12,000, purchased in the name of appellant No. 2 in August, 1918, at par; (c) two adjoining plots of land purchased in 1917 at a cost of Rs. 1,050, on which a building named "Sikandar Manzil" was subsequently constructed at a cost of about Rs. 10,000, one plot being taken in the name of appellant No. 1 and the other in the name of her infant son, appellant No. 3; and (d) the rights under a registered deed of sale dated the 26th October, 1923, executed by Abida Begum in favour of the infant children of appellant No. 1, who are appellants Nos. 3—6, purporting to sell to them, for a consideration of Rs. 10,000, her right title and interest in a one-third share of

two houses which her mother left in 1895, subject to a mortgage of the year 1893 for Rs. 9,000.

As regards properties (a), (b) and (c) the appellants do not now dispute that the necessary monies for these transactions must be taken to have been supplied by Abida Begum, but they maintain that they were effectively gifted to them by Abida Begum. The respondent denies this and maintains that they were benami transactions on behalf of Abida Begum, and that they formed part of her estate. Shortly after the death of Abida Begum appellants Nos. 1 and 2 sold the War Loan and War Bonds and, in their place, purchased for Rs. 35,000 a perpetual maintenance of Rs. 2,100 a year.

The Subordinate Judge held, on the evidence, that properties (a), (b) and (c), or the money for their acquisition and for the erection of the building on (c), were gifted by Abida Begum to the respective appellants in whose name they stood, but the Chief Court reversed that finding, differing in the inference to be drawn from the facts. These facts are fully detailed in both judgments, and it is unnecessary to reiterate them in detail. Their Lordships prefer the conclusions of the Subordinate Judge. In their opinion, all the circumstances go to support this view. Abida Begum had made a wakf of the monies she had recovered from her first husband's estate, and was able not only to live comfortably on her wasika, but to make very considerable savings out of it; it was from these savings that the various properties in suit were acquired. Her only brother was dead, and she had only the three half-sisters, apart from her second husband and his family, her devotion to whom has already been stated; these relations made it a most natural thing that, after the death of Abid Husain, she should make gifts to appellant No. 1 and her husband and family, who would not be among her heirs. On the other hand, it is not clear that any advantage would be gained by her carrying out benami transactions in favour of parties other than her heirs. But the decisive fact, in their Lordships' opinion, is that, as found by the Subordinate Judge, the interest on the War Loan was drawn by appellant No. 1, and the War Bonds remained in the possession of appellant No. 2, who drew the interest on them. In the case of "Sikander Manzil," the house is named after appellant No. 2, and this, along with the other circumstances, is sufficient, in the opinion of their Lordships, to prove the gift of this property. The respondent maintained that, Abida Begum being a pardanashin lady, the appellants had failed to prove that she knew and realised what she was doing; their Lordships are of opinion that, in view of the findings of the Subordinate Judge, the appellants have discharged their burden of proof in this respect.

As regards property (d), there is no doubt that the consideration of Rs. 10,000 was borrowed from the bank by appellants Nos. 1 and 2 and was handed over to Abida Begum in the presence

of the Sub-Registrar at the time of the transaction, and that the debt to the bank was subsequently repaid in instalments. The appellants maintained that it was a genuine sale, the price being provided by them. Both Courts below have held that the transaction was not a genuine sale, the form of a sale deed and the handing over of the money being a mere farce. The appellants accept these findings, and now seek to maintain that the property was gifted by Abida Begum, but this was not pleaded nor was it included in the issues, and there was no investigation into the facts in order to ascertain whether the gift was completed according to the requirements of Mahomedan Law ; accordingly, their Lordships are unable to entertain or consider this contention.

In result, the appeal will succeed as regards (a) the War Loan Certificates for Rs. 24,000 ; (b) the War Bonds for Rs. 12,000 ; and (c) the " Sikander Manzil " property, and will fail as regards (d) the interest in the two mortgaged houses. It follows that the decree of the Subordinate Judge dated the 23rd May, 1928, should be affirmed, and that the decree of the Chief Court dated the 6th November, 1929, should be reversed in so far as it granted decree in the respondent's favour for Rs. 12,000, being one-third of the War Loan and War Bonds, and for a one-third share in the " Sikander Manzil."

As regards costs in the Chief Court and of this appeal, their Lordships are of opinion, in view of the grounds expressed by the Chief Court for their decision as to costs in their Court and the partial failure of this appeal on a lesser point, that substantial justice will be done by giving the appellants the costs of this appeal, and not disturbing the decree of the Chief Court in this respect. Their Lordships will humbly advise His Majesty accordingly.

In the Privy Council.

NAWAB SULTAN BEGUM AND OTHERS

vs.

NAWAB QAMAR ARA BEGUM.

DELIVERED BY LORD THANKERTON.

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