

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Oomrao Begum and another, v. the Nawab Nazim of Bengal, from the High Court of Judicature at Calcutta; delivered the 7th May, 1875.*

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Present :

SIR JAMES W. COLVILE.

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

THIS is an Appeal from a decision of the High Court of Bengal in a suit in which the Respondent, His Highness the Nawab Nazim of Bengal, was the Plaintiff, and the Appellants and others were the Defendants. The suit was brought to recover possession of the Zemindaree, Pergunnah Gopeenathpore, in the district of Moorshedabad, and to set aside an award made by the Deputy Magistrate of Jomooa Kande, on the 2nd March, 1865, under section 318 of the Code of Criminal Procedure (Act, 25 of 1861). The suit was against the widows mother and daughters of Sayud Mehdi Ally Khan deceased. The Defendants Nos. 1 and 2, Baoh Russolee and Dowlut-oon-Nissa Khanam are described in the plaint as alleging themselves to be the widows of the late Saïd Mehdi Ally Khan : the Defendant No. 3, Fuzelut-oon-Nissa Khanam, as his mother : the Defendant No. 4, Azeez-oon-Nissa, as another widow : and the Defendants Nos. 5 and 6, Omrao Begum and Zuhoora Begum, as daughters of the said Saïd Mehdi Ally Khan. The last two Defendants Nos. 5 and 6, are the only Appellants to Her Majesty in Council, and the Defendants Nos. 3 and 4 are made Co-respondents with the Nawab Nazim ; but the Nawab alone has appeared on this Appeal. The principal Defendants, Nos. 1 and 2,

are no parties to the Appeal either as Appellants or Respondents.

The Zemindary to which the Nawab Nazim laid claim was purchased by Ameer-oon-Nissa *alias* Doolhin Begum, the widow of Nawab Ally Jah, deceased, a grand uncle of the Plaintiff, and who preceded him as Nawab Nazim. The estate was purchased by Ameer-oon-Nissa benamee, in the name of the said Mehdi Ally, at a sale for arrears of revenue, and it must now be taken that it was her property at the time of her death, although one of the issues raised by the Defendants Nos. 1 and 2 was whether she had a right to it as against Mehdi Ally, the ostensible purchaser. The said Mehdi Ally was one of her half-brothers and heirs according to the Mahomedan Law. Ameer-oon-Nissa died on the 21st January, 1858, and Mehdi Ally Khan on the 4th January, 1865. The suit was commenced on the 29th of April, 1867. The Nawab put in a written statement in which he alleged, amongst other things, that the said Ameer-oon-Nissa—

“ Was, after her husband's death, in the receipt of a stipend of 8,000 r. per mensem out of the funds allotted by the State to the support of the members of the Plaintiff's family; that, out of the savings of this and other Sultanut property which she had inherited, she purchased various properties in the names of various relations, and amongst the rest purchased at a sale for arrears of Government revenue on the 7th day of April, 1842, the said zemindary of Pergunnah Gopeenathpore in the name of her half-brother and dependent, the said Mehdi Ally Khan; that, after her purchase and down to the time of her death, which took place on the 21st day of January, 1858, she continued in undisputed possession and enjoyment of the said property; that, upon her death, the Plaintiff, according to the long established custom of his family, recognized by the Government of India on various previous occasions of the demise of Begums of his house, succeeded as her heir to the said zemindary, together with the other estate of the said Ameer-oon-nissa Begum, and entered upon possession thereof, and continued to hold the same until he was wrongfully dispossessed thereof: that the said Mehdi Ally Khan had never at any time, during the lifetime of the said Ameer-oon-nissa Begum, put forward any claim on the ground of his holding any title or interest in the said estate, but, on the contrary, in the letter which he wrote under his seal and signature to the said Ameer-oon-nissa Begum, he disclaimed all interest in Gopeenathpore and admitted her full right thereto; that, upon the death of the said Ameer-oon-nissa Begum, the said Mehdi Ally Khan did not make any claim either as heir to the said Ameer-oon-nissa Begum, or otherwise, to the said estate or any part thereof; but, on the contrary, agreed to receive an allowance of 600 r. per

mensem from the Plaintiff, in pursuance of which an order was passed by the Plaintiff on the 12th day of February, 1858, for the payment of that sum to the said Mehdi Ally Khan, and payment was accordingly made; and on the 24th day of February, 1858, the said Mehdi Ally Khan, together with his wife, the defendant Azeez-oon-nissa, executed and delivered to the Plaintiff in the presence of several persons a document by which he disclaimed all right to the estate of the said Ameer-oon-nissa Begum."

The Defendants Nos. 1 and 2 and the Defendant No. 3 put in written statements, but no written statement was put in on behalf of the Defendants Nos. 5 and 6. Both the lower Courts decreed in favour of the Plaintiff, but upon different grounds. They both held that the Ladaweenamah, or deed of disclaimer, was a genuine document. The first Court held that in consequence of it the Defendants, as heirs of Mehdi Ally, could not claim a right to succeed to the property, and consequently that it was unnecessary to come to any finding as to the custom set up by the Nawab, under which he claimed the right to succeed to the property of the Begum (Record, p. 832); on the other hand, the High Court, having found for the Nawab upon the question of the custom, treating the Ladaweenamah as strong evidence in support of it, considered it unnecessary to come to any decision as to the effect of the Ladaweenamah. They, however, expressed an opinion that the Ladaweenamah was not executed without a valuable consideration. (Record, p. 845.)

Mr. J. Dwarkanath Mitter, in delivering judgment said—

"We are of opinion that the *ladavee* in question was not executed without a valuable consideration. The urzee of the 10th February, 1858, submitted by Mehdi Ally Khan to the Plaintiff, praying for some provision for his maintenance, together with the order passed thereupon by the Plaintiff on the 12th February following, fixing a monthly stipend of 600 Rs., clearly point to the consideration for which the *ladavee* in question was executed a few days afterwards; and this consideration is made still more manifest when we come to the receipt granted by Mehdi Ally Khan on the 25th February, 1858, that is to say, on the day following the execution of the *ladavee*, whereby Mehdi Ally Khan acknowledged the receipt of a sum of 2,000 r. on account of the stipend hereinbefore referred to. But be this as it may, it is perfectly clear that Mehdi Ally Khan executed the *ladavee* in question of his own free will and accord, and without giving any decisive opinion as to whether that docu-

ment can be treated as an estoppel or not, it is sufficient for us to say that the Appellants can have no reasonable ground to complain if we use it as a strong piece of evidence in the cause."

With reference to the 8th objection, which was, that the evidence produced by the Plaintiff to prove the alleged custom was altogether very unsatisfactory: he said—

"We observe that the direct evidence produced by the Plaintiff to prove the family custom in question consists of the depositions of two witnesses, namely, Sayyad Mahomed Mehdi and Dorab Ally. We have also got the evidence of Sayyad Hossein Ally, one of the half-brothers of the late Ameer-oon-Nissa Begum, who says that he had heard it from his father that such a custom did really exist, and it is to be borne in mind that such a statement coming from this witness is entitled to very great consideration, inasmuch as he is one of the parties who would be entitled to succeed to the estate of the deceased Begum if the family custom set up by the Plaintiff is disproved. We are fully prepared to admit that the testimony of these witnesses, if there were nothing else to support it, would have hardly sufficed to enable us to declare in favour of a custom, the effect of which would be to disturb the natural course of the ordinary law of inheritance; but not only is this testimony wholly uncontradicted by any counter-evidence produced by the Appellants, but it acquires an irresistible force when we couple it with the *ladavee* so often referred to. If that *ladavee* is to be treated as a contract between the Plaintiff and Mehdi Ally Khan based upon good and valuable consideration on both sides, it is perfectly clear that the Defendants, as the legal representatives of Mehdi Ally Khan, and therefore deriving their title through him, are precluded from disputing the claim of the Plaintiff founded upon that instrument. If, on the other hand, we are to hold that Mehdi Ally Khan executed that instrument without intending to give to it the operation of a positive contract, but merely for the purpose of declaring what was the true state of facts to the best of his knowledge and belief, too much value cannot be attached to it as a piece of evidence in the cause. No counter-evidence of any kind has been given by the Appellants to show that the facts recited in this instrument are not true, or that their ancestor Mehdi Ally Khan was in any way misled or imposed upon when he acknowledged them as true, in a solemn instrument under his own seal and signature. Taking all these circumstances into consideration, we find it impossible to decide this point in favour of the Appellants."

There are many cases in which, under Mahomedan law, acknowledgments are not treated as merely matters of evidence, but have certain legal consequences attached to them, and are binding on third parties, as well as on those who make them. (See Baillie's Dig. of Mahomedan Law, 1st part, pages 403—406, and 2nd part, page 290.) It is not necessary, however, to determine what legal

effect would be given by the Mahommedan law to the Ladawi of the 24th February, 1858, if it were held to be merely a voluntary acknowledgment and disclaimer of title, for their Lordships concur with the High Court in thinking that it was founded upon a valuable consideration, and are of opinion that the Ladawinamah and the perwannah taken together amounted to a contract by which both the Nawab and Mehdi Ally and his heirs were bound.

It appears from the evidence of Rajah Prosono Narain Deb, who, from October, 1853, to June, 1861, was the Dewan Nizamut, and also had the general superintendence over the private affairs of the Nawab, that shortly after the death of Ameer-oon-Nissa, Mehdi Ally came to him nearly every day in a state of great alarm, and begged that he would intercede on his behalf in placing him under the protection of His Highness as he was under that of Ameer-oon-Nissa, and that the urzee was presented under his advice. By that document, which is set out at page 33 of the Record, Mehdi Ally acknowledged that neither he nor his heirs, except for his support and maintenance and that of his children and dependents, had any sort of claim to the property, goods, estate, or zemindaries of the said Ameer-oon-Nissa, and prayed that proper orders might be passed for the support of himself and of his children and dependents. Upon that urzee an order was passed by the Nawab Nazim on the same day to the effect that out of the properties, mehals, and zemindaries of the late Begum a monthly allowance of 600 rupees should be fixed for the said Mehdi Ally, and that help in every way and at all times should be afforded to him.

The order was merely indorsed on the urzee, and was not drawn up as a separate formal instrument. The Rajah Prosono Narain Deb, who was called as a witness for the Defendant, as well as for the Plaintiff, stated in his evidence that ten or twelve days after the presentation of the urzee, Mehdi Ally, in his presence and at his house, executed a ladavee ikrar in favour of His Highness the Nawab Nazim. He said: "This was at my suggestion, and with the permission of the Nawab. The intention was to have what had been recited in the urzee executed in a proper legal manner, and to avoid any future misunderstanding or difficulty on account of the benamee

nature of the transactions." He then described the mode in which the document was prepared, copied on stamped paper, and attested in his presence. (Record, p. 785, 786). He went on to say, "the Ikrar was brought to me by Sarib Ally Khan, Meer Bussunt, and Meer Yakoob. Shortly afterwards Mehdi Ally came to my house. He took the deed in his hand, and we went together to His Highness's deeree, and presented it to His Highness. Then His Highness ordered a perwannah to be delivered to Mehdi Ally, of the same nature as the order passed on the urzee. The perwannah had been prepared beforehand, and was brought by the Moonshees who were sent for. It was delivered to Mehdi Ally. The perwannah declared that His Highness should grant to Mehdi Ally and his heirs, from generation to generation, 600 rupees per month, upon condition that he should always remain submissive to the Nazim, and never depart from his arrangement (guheh na burzau). On the day that the ladavee was executed, either 1,000 or 1,500 rupees were paid in my presence, there and then, and 500 rupees were paid on the following day, and a receipt taken from Mehdi Ally for 2,000 rupees." Further on he says, "the receipt mentions the payment as an advance, of 2,000 rupees on account of the monthly allowance of the 600 granted. On account of the immediate emergency the advance was made from the Bekla Treasury, but was deposited in the Mehalot account, in accordance with the order that the allowance of 600 rupees should be given from the profits of Doohlin Begum's Zemindaree." A copy of the receipt was produced, and is set out at p. 41 of the Record. The perwannah is set out at p. 731 of the Record, and in their Lordships' opinion amounts to a grant by the Nawab by which he was bound.

Their Lordships see no reason to doubt that both Mehdi Ally and the Nawab, at the time of the execution of the ladawinamah, and of the perwannah *bond fide*, believed that the Nawab had a right to succeed to the property of Ameer-oon-Nissa.

They are of opinion that the object of the ladawinamah and of the perwannah was to carry out in a formal legal manner the arrangement contained in the urzee and order of the 12th February, 1858, so as legally to bind both parties to it. By the

perwannah, however, an additional grant was made by the Nawab to provide for Mehdi Ally's expenses of the Mohurram. It is to be observed that the order indorsed upon the urzee was not acted upon until after the ladawinamah was executed. That document having been executed on the 24th February, 1858, the rights of Mehdi Ally were not left to depend upon the order indorsed on the urzee, but on the following day, viz., on the 25th February, 1858, the perwannah was executed (p. 731) and on the same day Mehdi Ally received 2,000 rupees as an advance on account of the allowance granted to him.

Their Lordships are of opinion that the ladawinamah and the perwannah amounted to a valid contract by which the Nawab and Mehdi Ally were respectively bound. It is not necessary to decide whether upon the death of the Begum her property went over to the Nizamut according to usage, as stated in the ladawinamah, for even assuming it did not, and that Mehdi Ally executed the ladawinamah in ignorance of his strict rights, still if the Nawab acted *bonâ fide* under the belief that he had succeeded to the property of the Begum (and the evidence appears to their Lordships at least to establish this), and executed the perwannah upon the faith of the ladavee disclaimer, the Defendants would be bound by them. Even if the ladawinamah did not amount to a grant it contained an agreement not to set up any claim to the property, and being founded upon a sufficient consideration, was binding upon the heirs of Mehdi Ally, and precluded them from setting up a claim to the property (*Goodtitle v. Barley*, Cowper's Reports, 597). In any view of the case, Mehdi Ally or his heirs could not assert any title to the property without setting aside the ladawinamah, and this they could not do, except upon the terms of returning the 2,000 rupees which were paid upon the faith of the arrangement, and as a payment in advance on account of the allowance granted to him by the Nawab.

As to the Plaintiff's not having acted upon the ladawinamah since the payment of the 2,000 rupees, it appears that Mehdi Ally and his representatives subsequently repudiated the arrangement, and the fact of the Plaintiffs not having during that period, continued to make the monthly allowance according

to the terms of the perwannah did not release Mehdi Ally and his heirs from the ladawanamah.

It was contended in the High Court on behalf of the Appellants that the ladawanamah was extorted from the said Mehdi Ally by force and other unfair means, but that objection was so completely answered by Mr. J. Dwarkanath Mitter in his judgment in the High Court (Record, pp. 844 and 35) that it is unnecessary for their Lordships to say more than that they entirely concur with the High Court with reference to that contention.

It was further urged before their Lordships on behalf of the Appellants, that the only object of Rajah Prosono-Narain Deb in getting the ladawanamah executed was, according to his own evidence, to obtain an admission that the property, though in the name of Mehdi Ally, was held by him benamee for Ameer-oon-Nissa. Probably that was the principal object, for at that time Mehdi Ally does not appear to have claimed as heir of Ameer-oon-Nissa. The whole arrangement seems to have proceeded upon the assumption by all parties that the estates of Ameer-oon-Nissa, upon her death, went over to the Nizam, or, more properly speaking, to the Nizamut. That fact was admitted both in the urzee and in the ladawanamah, and it is clear that the Nawab could not have derived any benefit from the admission that the property was held benamee for Ameer-oon-Nissa, unless he was entitled to succeed to her property. The urzee, as well as the ladawanamah, which was intended to give formal legal effect to it, both contained an admission of the Nawab's title. Upon the whole their Lordships are of opinion that Mehdi Ally and his heirs were bound by the ladawanamah, and that the Decree of the first Court was correct, except so far as it decreed mesne profits to the Plaintiff as against Defendants Nos. 5 and 6.

The Decree was general, and awarded mesne profits against all the Defendants (Record, p. 814), whereas there was no evidence to prove that the present Appellants, Defendants Nos. 5 and 6, dispossessed the Plaintiff or ever had possession of any part of the Zemindaries in question.

Indeed, the Defendants Nos. 5 and 6 were not parties to the proceedings before the Deputy Magistrate, whose award the Plaintiff sought to set aside,



nor did the Deputy Magistrate find that they were in possession. On the contrary, he considered that the second party in the proceedings before him, viz., the 1st and 2nd Defendants who are not now Appellants, were alone in possession, and his order was that their possession should not be interfered with. Furthermore, the Plaintiff did not in his Plaint even allege that the Appellants dispossessed him or show any grounds for making them parties to the suit, except for the purpose of binding them as to the title. He merely stated that he had been dispossessed by Defendants Nos. 1 and 2 under the award of the Deputy Magistrate.

It appears to their Lordships to be extremely questionable whether even the Magistrates' finding as to the fact of the possession of Defendants Nos. 1 and 2 was correct, and whether, on the contrary, the Nawab was not in possession at the date of the order. It is further to be observed that the Defendants Nos. 1 and 2, by the 14th paragraph of their written statement, set up a title adverse to the Appellants, and insisted that they were entitled to the property by virtue of a deed of gift from Mehdi Ally. This shows that Defendants Nos. 1 and 2 were not holding for the benefit of Mehdi Ally's heirs, of whom Nos. 5 and 6 were two.

Upon the whole their Lordships are of opinion that the Decree of the High Court ought to be reversed so far as it affirmed that part of the judgment of the Lower Court, which awarded mesne profits against the Appellants, Defendants Nos. 5 and 6, and that it be affirmed as to the residue, and that it be ordered that that part of the judgment of the first Court, which awarded mesne profits against the Appellants, the Defendants Nos. 5 and 6, be reversed.

Their Lordships will advise Her Majesty accordingly.

Under the circumstances they consider that each party ought to bear his own costs of this Appeal.

