

Judgement of the Lords of the Judicial Committee of the Privy Council on the Consolidated Appeals of Ram Sarup and another v. Mussumat Bela and others, (Nos. 8 and 9 of 1879,) from the High Court of Judicature for the North-Western Provinces, Allahabad; delivered 14th November 1883.

Present:

LORD FITZGERALD.
SIR BARNES PEACOCK.
SIR ROBERT P. COLLIER.
SIR RICHARD COUCH.
SIR ARTHUR HOBHOUSE.

THESE Appeals are presented by the heirs of Luchmi Narain in two suits instituted by him for the purpose of enforcing certain judgements obtained by him against the Defendant Hearsey, and making them available against property, partly in Bareilly and partly in Badaun, which formerly belonged to Hearsey.

In the first suit the plaint states that Hearsey was the owner of the property in question at the time when he gave a bond to Luchmi Narain dated 3rd February 1873. It then states that Hearsey, in 1870, filed a petition in the Settlement Department alleging that the Defendant, who is generally called Vilayati Begum, his second wife and her three children had been put in possession in equal shares, on condition of the wife obeying her husband and the children remaining faithful to their religion, and that a mutation of names might take place. Then it prays relief against all the Defendants; it seeks to have the property sold to the entire displacement of the Begum, and to the displacement of the children excepting as regards their interest for life.

Ra 9727. 125.—12/83. Wt. 5011.

The real questions in the case are resolved into two, the first being whether Hearsey had, at any time prior to the acquisition by the Plaintiff of the interest on which he now sues, intended to divest himself of all interest in this property in favour of the Defendants, and had done acts sufficient to carry his intention into effect; and, secondly, whether that transaction was invalidated by the immorality of the consideration or motive for it?

On the first question, as to the transfer, several witnesses have been examined, and they all tell substantially the same story. The story is this: That early in 1870 Hearsey convened a large meeting of his neighbours and acquaintances (40 or 50 are said to have been present), that at that meeting he stated that he had been very ill, that he felt the precariousness of life, that he desired to avoid disputes among the branches of his family, (for besides the Begum he had other wives so called, and other children,) and that on that account he intended to give, and did thereby give to the Begum and her children, who were very young at that time, his property in the zillahs of Bareilly and Badaun. He said that the servants were to consider themselves not his servants but hers, and that he was to be no longer the owner of the property. And a formal ceremony took place, consisting of a gift of some rupees to the Begum by the mokuddams of the villages in question, no doubt symbolical of her assuming the ownership of the villages.

It is true that the witnesses, according to the translations that we have before us, differ in the expressions used as to the gifts to the children. They talk of a gift to the Begum and her sons,—a gift to her and her descendants,—to her and her issue, and so forth. How far those different expressions may be due to different translations of the same word, and how far

they may represent different words, is not told us; but their Lordships do not doubt that the substantial meaning of the witnesses was that the gift was intended by Hearsey for the Begum, whom he calls his second wife, who was acting as a wife to him, and those children whom she had borne to him, and whose interest he intended to protect against disputes.

From that day to this the possession has been enjoyed by the Begum, and there is evidence of many acts of ownership which she has exercised over the property. On that evidence both the Courts below have found that the whole of Hearsey's interest was divested from him and vested in the other Defendants. It is not necessary to refer to the passages in which their opinions are embodied, but the ultimate result may be stated in the finding on the 4th issue by the Subordinate Court:— "That Defendant " No. 5"—that is, Hearsey—"had no transferable right in the disputed property at the " time the Plaintiff lent money to him." That finding is sustained by the High Court.

This case is one to which the general rule of this Board to the effect that they will not disturb concurrent findings of the Courts below on questions of fact is eminently applicable. The evidence is oral. It is given in a language which we have not before us, and which we should not understand if we had it. The Judge of the Subordinate Court had the witnesses before him, and the High Court, which consisted of civilian Judges, must have understood the language in which the witnesses spoke. If, therefore, there was any argument to be founded upon little discrepancies in the story told by the witnesses, those Courts were thoroughly competent to deal with such a question; and their Lordships would be exceedingly reluctant, even if they thought that there was any doubt about

the propriety of their judgment, to disturb it. In fact Mr. Leith in his opening said that having regard to the evidence given in the suit he could not dispute but that there was an actual transfer of property at the time in question, that the transfer was perfectly *bond fide*, and that Hearsey was a solvent man at that time, so that no fraud upon creditors could be alleged.

The question argued upon that transaction, independently of the immorality of it, was whether or no the absolute interest passed from Hearsey to the Begum and her children, or whether they were entitled for life only. The same reason which excludes contention as to the actual transfer taking place appears to exclude contention also as to the amount of interest passed. The question of intention depends upon the oral evidence. The overt acts are the same whether a life interest was to pass or whether an absolute interest was to pass, and we must look to what the witnesses tell us as to the intention expressed at the time. Both Courts agree that the whole interest passed, and that expressions were used by Hearsey which are inconsistent with the notion that he did not intend to pass the entire ownership to the Begum and to her children.

The evidence relied upon by the Appellant is contained in the petition for mutation of names that is mentioned in the plaint. It is true that that petition and the subsequent mutation of names are of no great value for the Defendants' purpose, because the Collector had only jurisdiction with respect to the possession or that evidence of possession which the register affords, and that is the only matter which is dealt with on the mutation of names. The Defendants would be equally entitled to possession whether they were owners of the life interest or owners of the absolute interest. Therefore the petition and the

mutation of names only forward the case of the Defendants to the extent of proving a real *bona fide* transfer of some kind at the time, but they afford no evidence as to the extent of interest conferred by the transfer. So we must see what the witnesses say upon that subject; and they are all in accord that expressions were used which are inconsistent with the notion that any less interest than the absolute ownership was transferred. What the exact nature of the interests of the Defendants *inter se* may be is a question with which the Plaintiff has no concern. If it be the case that for some interest or other the whole ownership passed away from Hearsey at this time and passed into the Defendants, that is sufficient to exclude the Plaintiff from relief.

Now their Lordships pass to the next question that was raised, which depends on the immorality of the transaction. To impeach it on that ground the Appellants' Counsel argue as follows: that by reason of Hearsey's descent and religion the case is to be governed by rules of English law; that the Begum could not be his lawful wife; that the stipulation as to her continuing to act as his wife is immoral, though she is under the Mahomedan law, which allows sexual relations forbidden to Christians; and that the gift is so thoroughly vitiated as to leave Hearsey, the grantor, still the owner of the property in such a sense that the Plaintiff could treat it as his right title and interest liable to be sold under an attachment.

On those questions their Lordships desire to pronounce no opinion; and for this reason: They think there is no evidence that there was an immoral consideration to vitiate the transaction. In that they concur with the two Courts below. This gift was one entire transaction; there was

a single gift to the wife and the children, and a single consideration for that gift. How does the case stand with regard to the children? So far as the oral evidence goes, it is clear that no condition was imposed at time of the verbal transfer. The only evidence of immorality is contained in the application for the mutation of names. That application states that the gift was made to the children on condition of their adhering to their religion. It is impossible to suppose that there was a consideration given by the children or any contract entered into with them at that time. They were very young infants. They could not agree to remain Christians; and although on making a gift to them, the donor might attach or purport to attach such a condition, it would be a condition only and subject to the law of conditions. The transaction being an entire one, it is very difficult to treat the gift to the wife differently from the gift to the children. Their Lordships think that the Courts below were right in treating the gift to her as resting on the valid and moral considerations on which it was stated to rest at the time when it took place.

Their Lordships are of opinion that the gift is in fact unconditional, because, as it was complete at the time when the actual transfer took place, the parties could not afterwards import a condition; and the petition must be treated as inefficacious for that purpose. But even if it were otherwise,—assuming a condition, and an immoral condition,—it would be the condition that is immoral and not the consideration; and then the case would fall under the general rule of law that a gift to which an immoral condition is attached remains a good gift, while the condition is void.

On these grounds their Lordships think that the Appeal fails. As regards the second suit,

the particulars of it have not been stated to their Lordships, but they understand from the Counsel that the issues are exactly the same as in the first suit. Their Lordships think that the decrees of the High Court of Allahabad should be affirmed, and these Appeals dismissed with costs.

Their Lordships will humbly advise Her Majesty to this effect.

Faint, illegible text at the top of the page, possibly a header or title area.

Second block of faint, illegible text, appearing as a list or series of entries.

Third block of faint, illegible text, continuing the list or series of entries.

Fourth block of faint, illegible text, possibly a concluding paragraph or summary.

Fifth block of faint, illegible text at the bottom of the page, possibly a footer or page number.

Large area of extremely faint, illegible text on the right side of the page, possibly bleed-through from the reverse side.