

Judgment of the Lords of the Judicial Committee of the Privy Council on the Consolidated Appeals of Hakim Muhammad Ikram-ud-din v. Najiban, from the High Court of Judicature for the North-Western Provinces, Allahabad, delivered 14th May 1898.

Present :

LORD WATSON.

LORD HOBHOUSE.

LORD MORRIS.

LORD DAVEY.

SIR RICHARD COUCH.

[*Delivered by Lord Davey.*]

In October 1887 the present Appellant was married to Mussamat Imami Begum. She was then about sixty years of age and the Appellant was some sixteen years younger. Mussamat Imami Begum had been twice previously married and from one of her former husbands she had inherited a considerable fortune and at the date of her marriage to the Appellant was a woman of large wealth. On the other hand the Appellant appears to have been a person of very small means.

Mussamat Imami Begum executed a power of attorney dated the 3rd November 1887 in favour of the Appellant by which she empowered him to collect her rents and grant receipts and exercise other large powers over her property.

A few days afterwards Mussamat Imami Begum executed a sale deed dated the 9th

November 1887 by which she declared that she had sold two villages to the Appellant for Rs. 30,000 and having received the sale consideration in full from the aforesaid vendee had put him in proprietary possession of the property sold like herself. Jamna Parshad the special sub-registrar in his report stated that he had attended at the house of Mussamat Imami Begum on the 11th November 1887 and that the Mussamat heard word by word the contents of the sale deed and admitted from behind a screen the execution and completion thereof and admitted that she had already received gold mohurs worth Rs. 20,000 and the sub-registrar further reported that the Appellant the vendee paid in his presence ten bags containing Rs. 10,000 to the Mussamat the vendor. Fifteen days afterwards she executed a power of attorney dated the 24th November 1887 for the purpose of obtaining mutation of names the execution of which was also verified by a Commissioner.

Mussamat Imami Begum died in the month of January 1888 and shortly afterwards the present Respondent and her sister since deceased alleging themselves to be the lawful sisters and co-heiresses of the Mussamat commenced this suit against the Appellant. By their plaint the Plaintiffs denied the marriage between the Mussamat and the Appellant and alleged that he had taken exclusive possession of and appropriated without any title the bulk of her moveable and immoveable property. As to the sale deed they alleged that the Mussamat had no knowledge of that deed nor was it read out to her nor could she have understood it as she was under the influence of liquor and that in short the sale deed being spurious forged and without consideration was void. The prayer of the plaint was for possession of the villages (including the two in question) and other property as detailed

and that should the Defendant prove the sale of the two villages to be genuine the sale consideration thereof instead of possession should be awarded to the Plaintiffs against the Defendant along with the moveable property and for possession of the Mussamat's moveable property or payment of its value. The Appellant by his statement of defence denied the title of the Plaintiffs and relied on the sale deed.

The Subordinate Judge found that the Respondent and her co-Plaintiff were the legal heirs of Mussamat Imami Begum and that a marriage had taken place between the Appellant and the Mussamat. The first finding was varied by the High Court who found that although the Respondent and her co-Plaintiff were daughters of the same mother as the Mussamat they were illegitimate. The result of this was that the Plaintiffs became entitled to one moiety only and the Defendant (the Appellant) to the other moiety of the property. These findings as varied by the High Court are not now in dispute.

The 4th and 5th issues relating to the sale deed were as follows:—

“ 4. Did Mussamat Imami Begum execute the
 “ sale deed dated 9th November 1887 conveying
 “ certain villages to the Defendant and did she
 “ do so while she was in a sound state of mind
 “ or when she was not in her senses but in a
 “ state of intoxication without understanding
 “ what she was doing that is to say whether the
 “ contents of the said documents were under-
 “ stood by her or she was not capable of
 “ understanding them ?

“ 5. What is the actual value of the property
 “ sold ? Was Rs. 30,000 a fiction or the actual
 “ amount of the sale consideration ? Was the
 “ sum of Rs. 10,000 alleged to have been paid
 “ in presence of the Sub-Registrar the Commis-

“ sioner actually paid or was the transfer without
“ consideration ? ”

It is unnecessary to discuss at any length the evidence given on these issues because the two Courts are in substantial agreement as to the effect of it—although they are not agreed as to the legal result or consequence. Both Courts were satisfied that the Mussamat was not intoxicated at the time of verification of the sale deed and that she was a woman capable of managing her affairs and that she did in fact manage them and that she undoubtedly executed by her own hand the sale deed and power of attorney for the purpose of mutation of names being effected ; and as to the consideration for the sale that although the Mussamat acknowledged receipt of Rs. 20,000 it was not in fact paid and that the bags purporting to contain rupees were produced before the Sub-Registrar but there was no actual evidence of their contents or where the rupees (if rupees there were) came from or afterwards went to and in short that no part of the consideration was proved to have been paid by the Appellant to the Mussamat.

On these findings of facts (in which their Lordships entirely agree) the Subordinate Judge held that the presumption was that out of affection the Mussamat gave the property to the Appellant as a matter of favour and through some policy called that gift a sale and that instead of a deed of gift she executed a deed of sale in order to sustain the honour and respectability of the Appellant who belonged to an old respectable family of the town to screen him from any exposure. The learned Judges in the High Court dissented from this view and their Lordships agree with them. There is no evidence of any intention to make a gift and there is no suggestion in the pleadings that the villages had

been given to the Appellant or that his wife intended to remit to him or release him from payment of any part of the purchase money. The acknowledgment of the previous receipt of Rs. 20,000 would no doubt enable the vendor to transmit the property to a second purchaser as between whom and the vendor the latter would not be entitled to deny the payment of that portion of the purchase money. But as between the vendor and vendee it had not the effect of discharging him.

But while their Lordships so far agree with the High Court they do not altogether agree on the result though probably the difference is more one of form than substance. The High Court seems to have thought that in the circumstances there was a presumption of undue influence on the part of the Appellant and that he ought to have shown that the old lady had independent advice and thoroughly understood what she was doing and accordingly the Court set aside the transaction altogether. Their Lordships doubt whether this was right or altogether consistent with the previous findings by the Court. There is no case of undue influence made by the Plaintiffs in their plaint or raised in the issues on which the case was tried; and there is no evidence that Rs. 30,000 was an inadequate price or that the sale was an improvident one if the price had been paid. From the findings on the evidence their Lordships think it must be presumed that the Mussamat intended to pass the property for some purpose, and as the suggestion of a gift is excluded the deed must operate (if at all) according to what it purports to be, viz., a sale. In coming to this conclusion in the case before them their Lordships do not intend to throw the slightest doubt on the sound doctrine laid down in numerous cases as to the

obligations of persons taking benefits from a Purdah Nashin lady.

Their Lordships therefore will humbly advise Her Majesty that relief be given to the surviving Plaintiff (the present Respondent) in accordance with the fourth paragraph of the prayer of the plaint and for that purpose the decree of the High Court be varied by inserting after the words "specified below" the words "except the two villages Jabida Chapri with the garden and houses and Pachtaur in the Pargana of Nawabjang but including the sum of Rs. 15,000 being one moiety of the sum of Rs. 30,000 the price of the said two villages payable by the Defendant" and after the words "date of possession" the words "and together with interest on the said sum of Rs. 15,000 from the 9th November 1887 up to date of payment" at the rate usually allowed by the Court, and instead of the words "the amount whereof shall be" the words "the respective amounts of such mesne profits and interest to be" and that in all other respects the said decree ought to be affirmed and the appeal dismissed.

As the Appellant came before their Lordships to claim the property as a gift without any payment and never in the course of the proceedings offered to pay or give credit for the price as part of Mussamat Imami Begum's estate their Lordships will not advise Her Majesty to make any alteration in the disposal of the costs by the High Court and for the same reason and because the Respondent has substantially succeeded they do not think that the variation made by them in the decree should relieve the Appellant from the payment of the costs of these Appeals which the Appellant must therefore pay.
