

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Mus-
sumat Ushrufoonnessa Begum v. Baboo Gri-
dharee Lall from the High Court of Judicature
at Fort William in Bengal; delivered 19th
December 1872.*

Present :

SIR JAMES W. COLVILLE.

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

SIR LAWRENCE PEEL.

THIS was a suit instituted for the recovery of possession of a certain portion of the talook called Umbai, together with mesne profits.

The case of the Plaintiff was, that he purchased this portion of the talook on the 27th of August 1859 from one Mussumat Azeemun. In order to make the case intelligible it is as well to observe that Azeemun was a sister of Mussumat Khairoonnessa, that Mussumat Khairoonnessa claimed this property through her son Velayet Hossein, and that the Defendant Ushrufoonnessa was a daughter of Khairoonnessa, and a sister consequently of Velayet Hossein. There was a question whether Khairoonnessa obtained this property from Velayet Hossein by devolution or by a deed executed by him; but it is now admitted that she must, for the purposes of this suit, be taken to have obtained it by a deed. And indeed some other questions which were raised seem now to have been disposed of, leaving the sole question in the cause whether or not the Plaintiff obtained this property by a valid deed of sale from Azeemun.

The circumstances under which this deed of sale was made may be shortly stated to be these. The plaintiff is a pleader, and on the 15th of February 1859 he had instituted a suit on behalf of one Ameeroonessa, who was a representative of Belkeesoonea, and a lady of the name of Parbutty his own stepmother, against Ushrufoonessa, as the heiress of Velayet Hossein ; in which suit he endeavoured to establish that Velayet Hossein had no title whatever to this property, the property having been altogether bought by the money of Belkeesoonea, who was the wife of Velayet Hossein. It appears, therefore, that while a suit was in progress, in which, on behalf of his stepmother and another client, he contended that Velayet Hossein had no property at all in this mouzah, he obtained a conveyance of a portion of the mouzah from this lady Mussumat Azeemun, whose sole title was derived from Velayet Hossein. It is also an undisputed fact in the case that this conveyance, being nominally made to one Sunt Lall, was never asserted by the Plaintiff, until seven years after, when he commenced this suit, to have been in reality made to him ; but he seems, according to his own showing, to have concealed the case which he now sets up.

Their Lordships have perused and considered the evidence of the witnesses who were called for the purpose of proving the execution of this deed and the payment of the consideration money ; for it is to be observed that the Plaintiff in this case has not merely the burden of proving the execution of the deed ; he has to prove further that Sunt Lall was really his own benameedar, and that he advanced the money which was duly paid to the vendor. The evidence of these witnesses their Lordships consider altogether unsatisfactory. As far, indeed, as the execution of the bill of sale is concerned, from other evidence their Lordships have come to the conclusion that it was in fact executed ; but as for the payment of the consider-

ation money, if it rested alone on the evidence of these witnesses, their Lordships would not rely upon it. That appears to have been the view of the Principal Sudder Ameen, who dismissed the suit; and that appears also to have been the view of the High Court, for they appear to think the evidence below of so unsatisfactory a character as to make it necessary that they should exercise the power, which undoubtedly they possess, of summoning the Plaintiff before them and examining him.

Their Lordships cannot help here observing that in a case like this it does appear to them somewhat dangerous to allow a Plaintiff, a professional man, who has not thought fit to give evidence in his own suit in his own behalf, upon the failure of evidence which he has adduced, to be subsequently called for the purpose of supporting the case, which had broken down. The High Court undoubtedly attach credence to the evidence of the Plaintiff; but upon that subject their Lordships are unable to concur with the view taken by the High Court. As far as the payment of the consideration money is concerned, which is necessary to support the reality of this transaction, (for the question really comes to this, was it a real transaction, or was it a colourable one?) the evidence of the Plaintiff appears of a very unsatisfactory character. He does not speak at all directly to the payment of it, but says that he procured it, that he sent it; he speaks of an agreement as to the purchase money having been made with the son of the Mussumat; and at the last, when questioned by the Court, he says that he saw the lady coming back in her carriage which he had sent for her, and he saw the bag of money in her hand before her as she was going away. That is an account which does not appear to their Lordships of a very satisfactory character.

But their Lordships have been referred to a deposition of this witness made about a month after the occurrence of the transaction, which it appears very material to consider. It should be

observed that in his last examination he lays the scene entirely at the godown of Sunt Lall, the nominal purchaser. He represents that he saw the transaction from his own house, which was at some distance from it, and he represents the transaction to have been entirely his own; and, as far as would appear from his last deposition, Mosaheb Khan, to be hereafter referred to, had nothing whatever to do with it. It appears that he was examined on the 21st of September 1859. His examination was taken in a proceeding of this kind. The present Plaintiff, Mussumat Ushrufoonnessa, brought a criminal charge against Mosaheb Khan, her own mooktear, for various acts of alleged malversation, one of which was the obtaining this very deed from Azeemun to Sunt Lall; and in the course of this case Gridharee Lall is called as a witness, seemingly for the prosecution. The account he gives of the transaction in substance is this. On it being put to him whether he knew of any collusion between Mosaheb Khan and Azeemun, he says, "I do not know whether the aforesaid Mussumat had made the sale in the name of Sunt Lall in collusion with Mosaheb Khan or not;"—the notion in the mind of Ushrufoonnessa at that time appearing to be that there was collusion between Azeemun and Mosaheb Khan. The question does not point to her having suspected Gridharee Lall of having had anything to do with it at that time. He says, he does not know whether this sale was made in collusion with Mosaheb Khan, but he says, "on the day the sale was made Mosaheb Khan also went to my house along with the said Mussumat;" and he subsequently says, "on the day of the sale the aforesaid mookhtear went to my house to make the conveyance." Now, this does appear an entirely different story from that which he told before the High Court. If his story told before the High Court were true, he could have had no difficulty whatever in answering the question with respect to the collusion of Mosaheb

Khan and Azeemun. His answer would have been, "There was no collusion whatever between Mosaheb Khan and Azeemun. Mosaheb Khan had nothing to do with the transaction. It was entirely my own; I bought the property; I sent the money. It was conveyed to Sunt Lall entirely for me, and Mosaheb Khan had nothing to do with the transaction. There was in fact no collusion with anybody." And one does not see why, if he were an honourable man, and the truth were what he has told the High Court, he did not come forward when Mosaheb Khan was charged with fraud in connection with this transaction, and tell the story which he tells now. But, so far from that, he does not give the slightest hint of the story which he now brings out for the first time in this suit, but he gives a totally different version of the transaction. He represents the scene to be a different one, namely, in his own house instead of that of Sunt Lall; and he speaks of Mosaheb Khan as the party to the transaction, entirely concealing that he himself had anything to do with it.

Looking at the nature of the transaction, at some of the admitted facts which have been before referred to, and to the two accounts which have been given by the Plaintiff, which appear to their Lordships to be at variance, their Lordships are unable to give credence to the latter account which has been given by the Plaintiff; and in their opinion, he has not given that proof, which under the circumstances he was called upon to do, of the genuineness of the transaction, and of the payment of the money.

It is not necessary to speculate upon the precise nature of the transaction, their Lordships having come to the conclusion that it was a colourable one. It may be, as has been suggested in some proceedings in the cause, that some parties, Gridharee Lall among them, may have thought it convenient or useful for the purposes of the litigation to obtain a conveyance from Azeemun

to Sunt Lall. They may have thought it more convenient to put him forward, as the party possessing the property, than her; and further it may have been their object to obtain a more complete control over the suit by having the property in his name than they would have had if it had been in hers. But, whatever be the real nature of the transaction, their Lordships are of opinion that the Plaintiff has failed to establish a *bond fide* conveyance to himself for value.

It only remains to notice one or two observations which have been made on the part of the counsel for the Respondent. It has been suggested that inasmuch as Azeemun has not appealed, therefore it is not open to Ushrufoonnessa to contest the validity of this deed. It may be that Azeemun might, if she had chosen, have been able to avail herself of certain equities against the Plaintiff, which it would not be open to Ushrufoonnessa to do; but their Lordships are of opinion that it is open to Ushrufoonnessa to contest the validity of the transaction, and to maintain that it is colourable, not real. It has also been contended that the effect of some other proceedings has been to establish an admission on the part of Ushrufoonnessa of the validity of this deed. The proceedings relied upon chiefly are a suit which she instituted against Azeemun and Sunt Lall for the purpose, among other things, of setting aside this deed, her case then being that she obtained the property from her mother by a tumlicknamah executed upon her mother's deathbed, and that therefore Azeemun could have nothing to dispose of. That suit was finally decided against her upon the ground that this tumlicknamah, alleged to have been given by her mother upon her deathbed, was not valid; but that does not, in their Lordships' opinion, dispose of the validity of the deed. The most that can be alleged is that in that suit Ushrufoonnessa admitted the execution of the deed. Their Lordships are of opinion that, as far as that part of the case is concerned, it must be taken that she did admit the actual ex-

ecution ; and, indeed, upon other grounds—among others, the fact of the registration of this deed—their Lordships are of opinion that the mere *factum* of the deed is proved. But, for the reasons which they have given, they have come to the conclusion that this was not a real transaction, and that the property was not *bond fide* conveyed, and therefore that the decree of the High Court must be reversed.

Under these circumstances their Lordships will humbly advise Her Majesty that the decree of the High Court be reversed, and that the decree of the Principal Sudder Ameen be affirmed, with costs.

