

*Judgment of the Lords of the Judicial Committee
on the Appeal of Munnoo Lall v. Lalla
Choonee Lall and others, from the High
Court of Judicature at Fort William in
Bengal ; delivered November 5th 1873.*

Present :

SIR JAMES W. COLVILLE.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.

SIR LAWRENCE PEEL.

THIS Appeal has been heard *ex parte*, and after considering the opening of Mr. Leith, which has been made in a fair and candid manner, it appears that there are concurrent findings of two Courts below upon a question of fact decisive of the case, and decisive of it against the Appellant.

The circumstances are very short. It appears that a man of the name of Reep Bhunjun Singh was in debt, and at the time possessed some considerable estates. The Appellant Munnoo Lall had been his banker and advanced money to him, and, amongst other securities, he held a mortgage of the date of 9th October 1863 from Reep Bhunjun Singh of Mouzah Shahpore. It was an ordinary mortgage to secure the sum of Rs. 20,000. Subsequently to that mortgage, on the 9th of August, 1864, Reep Bhunjun Singh sold the mouzah to the Respondents, or to those whom the Respondents represent, the bulk of the consideration given for the purchases being the money which was due to the purchasers from Reep Bhunjun Singh, for which they had obtained decrees. Besides the amount of the decrees, a small sum was paid on each of the

purchases in cash. Four years after these purchases the Appellant commenced this suit, which is a suit to enforce payment of his mortgage bond against the Respondents, and prayed a sale of the mouzah. The defence set up by the answer, amongst others, was the equitable defence that Munnoo Lall could not enforce his mortgage bond as against these Respondents because at the time of their purchase he had been present when the negotiations for the purchase took place, and in answer to enquiries, had led the purchasers to believe that he had not any lien upon the estate, consequently that he had not the mortgage bond which he sets up in this suit. The defence is made in the answer, as Mr. Leith observed, in not very precise terms, but they say that the purchase was made in consultation with the Plaintiff and his son, and at that consultation they were led to believe that there was no such lien as the mortgage of 1863.

The issues were settled, and two only of them are material. The first was that the bond was altogether collusive and made without consideration for the purpose of defeating any subsequent purchasers; and the second, which has become the material one, is "Was its existence"—that is, the existence of the mortgage deed—"intentionally kept secret from the Defendants at the time of the purchase?" There was a third issue, which raised the question whether, the litigated property being under attachment at the time of the execution, the mortgage deed was thereby rendered nugatory. Upon the first trial of these issues, the Judge of Shahabad, having found the third issue against the Plaintiff, was of opinion that it decided the cause, and that it was immaterial for him to determine the other issues. However, on appeal to the High Court, that Court reversed the judgment of the Judge of Shahabad, and remanded the case for trial upon

the first two issues to which attention has been called, and amended the second issue by inserting the words "by the Plaintiff" after the words "was its existence intentionally kept secret." The parties went down to try that issue, which was in effect whether the Plaintiff had intentionally and designedly, and with a view to deceive the Defendants, kept the existence of his mortgage secret from them. That issue raises a pure question of fact. It appears that there was evidence on both sides, the witnesses on behalf of the Respondents giving testimony that the negotiations took place in the presence of the Appellant Munnoo Lall; that inquiries were made whether he had any mortgages, it being expected from his relation to the vendor that he might have them, and that in answer to those inquiries, he distinctly stated that he had none; and documentary evidence was also given in support of the affirmative of the issue. Some evidence undoubtedly was given on the other side of a contrary character. The Judge of Shahabad, who heard the witnesses, has given credit to those who were called on the part of the Defendants. He distinctly gives credit to them, and he thinks that their evidence is corroborated not only by the documents but by the probabilities of the case. On appeal to the High Court, the High Court affirmed his finding, after much consideration given by themselves to the evidence. The chief justice, who analysed the evidence given by the witnesses, has pointed out various circumstances which appear to him to corroborate them. The learned Chief Justice thought that Munnoo Lall was present at the time of the negotiations, and that enquiries were made of him. Their Lordships think it is a natural conclusion to draw from all the circumstances that some enquiry would have been made of him, and they think it must be pretty evident from the

whole circumstances of the case that if the Defendants had had notice of the mortgage held by the Appellant, they would have hesitated to purchase as they did. They took the estate, giving up their decrees, and also an attachment which they held. Their Lordships agree with what is stated by Mr. Leith that there may have been no duty upon Munnoo Lall voluntarily, and without being asked, to disclose his security, but the case is not put simply upon the omission to give notice, but upon an actual misleading of the Defendants, not merely by the acts, but by the express declarations of Munnoo Lall himself.

Under these circumstances their Lordships think that they could not have departed from their ordinary rule of not disturbing concurrent judgments upon a question of fact of two Courts, even if they had felt some doubt upon the finding. But after the discussion of this case, their Lordships are disposed to agree with the findings of the Court below.

If then the issue has been properly found, it is really decisive of the case, because it supports the plain equity, that a man who has represented to an intending purchaser that he has not a security and induced him under that belief to buy, cannot as against that purchaser subsequently attempt to put his security in force.

The result is that their Lordships will humbly advise Her Majesty that the judgment of the High Court be affirmed and this appeal dismissed, with the costs incurred by the Respondents previous to the hearing.