

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Wajid
Khan v. Raja Ewaz Ali Khan, from the Court
of the Judicial Commissioner of Oudh ; delivered
May 5th, 1891.*

Present :

LORD WATSON.

LORD MORRIS.

SIR RICHARD COUCH.

MR. SHAND (LORD SHAND).

[*Delivered by Lord Morris.*]

IN this case a suit was filed by the Appellant Wajid Khan, the son of one Dalmir Khan, seeking to have a declaration of right to possession of certain villages under a deed or will of the 21st June 1865, purporting to have been executed by Rani Sadha Bibi, the widow of Raja Ali Baksh, in favour of Dalmir Khan. The district judge and the Judicial Commissioner of Oudh decided against the Plaintiff; and both those Courts decided substantially on the same ground, that the document was executed under circumstances in which it could not be supported.

For the purpose of their Lordships' judgment it appears to them that it is not necessary to consider whether the document should be construed as a deed of present conveyance or a will, because in neither aspect can it be upheld. Dalmir Khan held a highly fiduciary position in regard to Rani Sadha Bibi, who was alleged to have executed it; she was a lady 65 years of age and comparatively illiterate, and she does not seem to have had any adviser or counsellor except Dalmir Khan, who appears to have had great influence over her, for one of the exhibits in the case is a will made

by her in his favour in the year 1862, only some three years before the execution of the document which is in question in this case. He certainly filled such a position towards her as to render it incumbent upon him to show that he had made a proper use of the confidence reposed in him by her, and that the execution of the document, granted without any valuable consideration and from which he obtained important pecuniary benefit, was free from all attempt at undue influence. In the opinion of their Lordships the onus lay upon him to do so; because although the deed of 1865 at first provides that this lady sets apart 29 villages of her patrimony, producing a rental of Rs. 9,993 a year, to defray the expenses of her tomb and that of her deceased husband, it goes on to say that Dalmir Khan, her managing agent, shall have the management of the endowment in perpetuity, generations after generations, and that under every circumstance he shall have full power for good or for evil. Dalmir Khan thus became the person substantially interested, because, looking at the facts of the case, it would appear that a comparatively small portion of this large fund could be annually allocated to the expenses of the tomb, and that a large surplus would each year remain in his hands.

Under these circumstances Dalmir Khan is brought within all the well-recognised principles which have been already referred to in the discussion of this case by more than one of their Lordships, namely, that every onus is thrown upon a person who fills such a character as he did, of showing conclusively that the transaction was an honest one, and a *bonâ fide* one, as to which a woman in the position of this lady had had some independent advice, or some opportunity of knowing exactly what she was about, and in which she was not under the complete influence of her manager. Their Lordships are clearly of opinion that this

instrument is one that cannot be sustained ; that it is not a *bonâ fide* instrument ; and that the onus which their Lordships consider lies upon Dalmir Khan's representative has not been sustained, namely, that of showing that this was a proper transaction considering the relationship of the parties.

Then it is said that although Rani Sadha Bibi revoked this deed in 1872 by a registered petition, it was a deed *in præsentî* which could not be revoked, at all events in so far as the endowment was in the nature of a dedication of her property to the expenses of her husband's and her own tomb, and that the petition itself recognised at that time the continuing existence and validity of the endowment. But if the instrument was bad in the beginning, at all events as regards the benefit which Dalmir Khan took under it, it is difficult to see how his representative is prejudiced by its revocation in 1872, which if valid puts an end to the instrument, and if invalid could not set up an instrument that was bad in itself. Their Lordships are clearly of opinion that the instrument was bad *ab initio* ; that it was improperly obtained by a person in a fiduciary character ; and that even if there were no onus on Dalmir Khan's representative to prove the honesty of the transaction, all the facts of the case go to show that there was active undue influence.

Upon these grounds their Lordships will humbly advise Her Majesty that this Appeal should be dismissed, and that the judgment of the Court below should be affirmed. The Appellant must pay the costs of this Appeal.

