

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Ram Chunder and others v. Sheik Mahomed Yusuf, from the High Court of Judicature at Fort William in Bengal; delivered 7th July 1898.*

---

Present:

LORD WATSON.

LORD HOBHOUSE.

LORD DAVEY.

SIR RICHARD COUCH.

[*Delivered by Lord Watson.*]

In this Appeal, which is *ex parte*, the Appellants are judgment creditors under a decree of July 1888 for Rs. 7,713. 5. 9, who had, before the year 1892, recovered part of their debt, by judicial sale of property belonging to Yakin Ali, their debtor. On the 29th January 1892, they presented to the District Judge of Purnea, a petition for further execution, in satisfaction of the balance still due to them, against three jotes of land in the District of Purnea, which they represented to be the property of the judgment debtor Yakin Ali.

Yakin Ali, who was alive during these proceedings, was married to Nurjehan, who, so far as appears, died about 1887. They had one child, a daughter Rasidan who married Yad Ali, son of her father's cousin. Yad Ali died in 1884, leaving a son, Sheik Mahomed

Yusuf, and two daughters. His wife, Rasidan, died in 1886 or 1887.

Sheik Mahomed Yusuf, the grandson of Yakin Ali, who was then a minor, on the 14th May 1892, with his paternal grandmother, as his guardian and next friend, presented a petition and claim to have the three jotes of land in question released from attachment and sale proclamation, upon the ground that they were not and never had been the property of Yakin Ali. The petitioners averred that these properties had been acquired by Yad Ali, and had been possessed by him until the time of his death, when they passed to and had since been possessed by his son, Sheik Mohamed Yusuf, the petitioner.

In answer to that application, the Appellants filed a petition and refutation, in which they denied that the properties belonged to or had been possessed by either Yad Ali or his son. They alleged,—“Sheik Yakin Ali is a debtor for numerous decrees and with a view to protect the properties from attachment and sale, he has kept all these jotes in the benami name of Sheik Yad Ali, a dependent of his, the real proprietor of the said jotes being Sheik Yakin Ali, the judgment debtor above-named, and they have been up to the present time in the possession of the said judgment debtor.”

Upon these pleadings, the case went to proof. The sole issue which they raise, and the only question which has been discussed in this appeal, is, whether the three jotes belonged in property to Yad Ali and his son, or were held by them as benamidars, for behoof of Yakin Ali.

The District Judge, on the 10th August 1892, disallowed the petition and claim of the minor and his guardian. On Appeal to the High Court his decision was reversed by Chunder Madhub Ghose and Rampini, J.J. Their Lordships are of

opinion that the Judgment of the High Court is right, and ought not to be disturbed.

The solitary fact, as to which the parties are agreed, is, that down to the year 1875, the three jotes were included, with other lands, in a putni right which belonged to one Sugandi Lal.

The evidence in so far as it can be said to bear directly upon the question of title, establishes these facts, (1) that the putni right, which included the jotes, was bought at the auction sale of 1875, in the name of Nurjehan, the wife of Yakin Ali, who was the ostensible bidder and purchaser, (2) that sometime after the sale, the three jotes were transferred, in the collector's books, into the name of Yad Ali, before he became the husband of Yakin Ali's daughter, (3) that on the death of Yad Ali in 1884, the jotes were transferred to the name of his son Sheik Mahomed Yusuf, and that the entry remained unaltered at the commencement of the present proceedings. The Appellants made no attempt to prove that Yakin Ali, who is said by some of the witnesses to have been in debt to the extent of Rs. 14,000, was in a position to pay, or did pay any part of the price of the putni.

In so far as it bears upon the possession had of the three jotes, after the date of its purchase in 1875, or in other words, upon the person who actually received the rents payable to the putnidar, the evidence is conflicting. The evidence on both sides, in so far as it relates to that matter, consists in the testimony of persons who either paid rent as collectors, or collected rents for the putnidar. The receipts for rent produced do not throw any light upon the point, and were not seriously relied on by the Appellants counsel. Upon the evidence their Lordships find it impossible to affirm that, as the Appellants contend, Yakin Ali was in proprietary possession of the jotes by receipt of rent.

The Appellants having, in their Lordships opinion, failed to establish, either that Yakin Ali at any time acquired a title to the jotes in question, or that he ever was in proprietary possession of them, they will humbly advise Her Majesty to affirm the judgment appealed from.

---