

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Chaudhri Thakur Das and Others v. Chaudhri Jairaj Singh, from the High Court of Judicature for the North-Western Provinces, Allahabad; delivered the 2nd December 1903.*

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Present at the Hearing :

LORD MACNAGHTEN.

LORD LINDLEY.

SIR ANDREW SCOBLE.

SIR ARTHUR WILSON.

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[*Delivered by Sir Arthur Wilson.*]

One Debi Singh died in 1889, leaving surviving him a widow, Bhup Kunwar, two grandsons, daughter's sons, and three nephews, brother's sons, Thakur Das and his brothers.

The widow claimed the succession to her husband's estate, but was opposed by the nephews.

While the litigation thus caused was in progress, the widow had recourse to Jairaj, a money lender, the present Respondent, who assisted her in her litigation and advanced or procured funds for its maintenance. This involved a series of transactions mainly embodied in documents the actual execution of which is not disputed, and the details of which it seems unnecessary to examine. The controversy was finally decided in favour of the widow by the Decree of the High Court of the 12th May 1893.

On the 21st July 1893 the widow transferred her estate to her two grandsons. On the 25th July 1893 the two grandsons executed a mortgage

bond for Rs. 4,000 in favour of Jairaj and others. The consideration was expressed to be the satisfaction of prior charges in favour of persons who may very likely have been connected with Jairaj, and a parol debt to Jairaj. On the 18th October 1894 the two grandsons executed a further mortgage bond for Rs. 5,000 in favour of Jairaj alone. The consideration was expressed to be the satisfaction of certain existing obligations and a fresh cash advance of Rs. 1,250. On the 8th September 1895 the two grandsons with their grandmother conveyed the whole property to the nephews Thakur Das and his brothers.

On the 26th October 1895 Jairaj brought the present suit upon the mortgage of the 18th October 1894. He made Defendants, amongst others, his mortgagors the two grandsons, their grandmother, and the three nephews as purchasers, and he asked that the sale proceeds of the property should be applied, first in payment of a charge, which is not disputed, in favour of the nephews Defendants, secondly, in satisfaction of the mortgage bond of the 25th July 1893, and thirdly in satisfaction of that of the 18th October 1894. The questions in the case were as to the validity of the two mortgage bonds of the 25th July 1893 and the 18th October 1894.

The substantial Defendants were the now Appellants, that is to say, the nephews Thakur Das and his brothers, and they set up a case of want of consideration, undue influence, and fraud, and an issue was raised accordingly. The mortgagor Defendants, the two grandsons, told a detailed story leading to the same result as that aimed at by their co-Defendants; but that story has been disbelieved by both Courts in India and need not be further noticed.

The Subordinate Judge who heard the case

came to the conclusion that there was such a relation of active confidence between Jairaj and his mortgagors, within the meaning of Sec. 111 of the Indian Evidence Act, as to throw upon the former the burden of proof of the good faith of the transactions upon which he relied. He held further that Jairaj had failed to prove the consideration for either of the mortgage bonds in question except the cash advance of Rs. 1,250 under the second instrument; and except to this extent he decided against the validity of the two mortgage bonds.

The High Court, on appeal, dissented from the opinion of the Subordinate Judge that any relation of active confidence existed between Jairaj and his mortgagors at the dates of the mortgage bonds. Their Lordships agree with the opinion of the High Court upon this point. Whatever may be thought of the relations between Jairaj and the widow while he was dealing with her during the course of her litigation, their Lordships can see no sufficient evidence that during the later transactions there was any relation of active confidence between Jairaj and the grandsons within the meaning of Section 111 of the Evidence Act.

The learned Judges of the High Court arrived at another conclusion of much greater importance than anything affecting the burden of proof. They carefully examined the evidence, and were of opinion that the consideration for the two mortgage bonds in question was proved to the full extent. Their Lordships agree in this view. The contrary view taken by the Subordinate Judge appears to have resulted from two opinions which he had formed, first, that the conduct of Jairaj had been dishonest throughout the transactions in question, and secondly, that practically all those concerned in those transactions were parties to a conspiracy to defraud;

and for these opinions their Lordships, concurring with the High Court, can see no sufficient foundation.

Their Lordships will humbly advise His Majesty that this Appeal should be dismissed. The Appellants will pay the costs.

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