

Judgment of the Lords of the Judicial Committee of the Privy Council on the Consolidated Appeals of Durga Bakhsh Singh v. Mirza Muhammad Ali Beg, from the Court of the Judicial Commissioner of Oudh; delivered the 29th July 1904.

Present at the Hearing:

LORD DAVEY.

LORD ROBERTSON.

SIR ARTHUR WILSON.

[Delivered by Lord Robertson.]

The questions raised by these Appeals arose in two suits, now consolidated, brought for the cancellation of two mortgage deeds granted to the Respondent by Fateh Singh, the Appellant's father, on 13th January 1892. The ground of action was the same in each case, viz., that Fateh was insane and that the deeds were obtained by fraud. At the same time it is necessary to bear in mind that the consideration of the mortgages was different, inasmuch as the one, for Rs. 8,000, was granted for a fresh advance of cash paid down, while that for Rs. 14,400 was granted as the result of a long series of former mortgages and decrees.

The Subordinate Judge, on 27th October 1898, held that the smaller mortgage could not be cancelled. As regards the larger one, he held it good to the extent of Rs. 8,000, and bad as regards the balance of Rs. 6,400. The Judicial Commissioners of Oudh, on 31st July 1899, held that the Appellant had failed to establish his case in either suit and dismissed both.

The essential weakness of the Appellant's position is that both Courts have held Fateh not to have been insane, and the grounds upon which the Subordinate Judge gave him a limited decree in the Rs. 14,400 suit are entirely unsupported by evidence. The theory of the Subordinate Judge was that, while Fateh was not insane, he was helpless and weak-minded, and the Respondent defrauded him. Neither of these propositions is substantiated. All the testimony which goes to mental unsoundness in Fateh goes to insanity in its crudest and most palpable form, and there is no case of helplessness or weakness. Fateh was blind, and had been so for fifteen years. But the picture drawn of him by the Appellant's witnesses is not of a helpless old man, but of a raving old man. Several witnesses so describe him, and, having done so, leave their assertion unsupported by detail or circumstance. This account of Fateh found no credence in either Court, and had been contradicted by adequate and responsible testimony.

Now the case constructed by the Subordinate Judge and substituted for that advanced by the Appellant is the case of a helpless or facile mortgagor, operated on by a fraudulent mortgagee. But then it is not legitimate to commute an insufficient case of insanity into a complete case of weakness, when the type of insanity connoted in the evidence is something quite different; and, second, the Appellant has entirely failed to make out any case of fraud at all. As regards the mortgage for Rs. 8,000, the materials were discouraging, this being a fresh advance of cash; and the mere circumstance that the money, or some part of it, was paid by Fateh to persons connected with the Respondent comes to nothing, as this has not been followed up by showing those payments to have been made *sine*

causa. As regards the mortgage for Rs. 14,400, the antecedent obligations of Fateh under old mortgages and decrees make it at least probable that he was really due that or some similar sum, the amount of which had been under negotiation. But it was for the Appellant to bring this to a point by proving the state of the account; and on the face of the record this was one of the conditions of his succeeding. It is impossible to supplant this sort of case by a conjectural theory about the machinations of two Talukdars, such as has been supplied by the Subordinate Judge.

Their Lordships will humbly advise His Majesty that the Appeals ought to be dismissed. The Appellant will pay the costs of the Appeals.
