

Privy Council Appeal No. 52 of 1911. Oudh Appeal No. 17 of 1908.

Kali Bakhsh Singh and others - - - *Appellants.*
v.
Ram Gopal Singh and others - - - *Respondents.*

FROM

THE COURT OF THE JUDICIAL COMMISSIONER OF OUDH.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 27TH NOVEMBER 1913.

Present at the Hearing :

LORD SHAW.
LORD MOULTON.

SIR JOHN EDGE.
MR. AMEER ALI.

[Delivered by LORD SHAW.]

This is an Appeal from a Judgment and Decree of date the 21st May 1908, of the Court of the Judicial Commissioner of Oudh, which reversed a Judgment and Decree of the Subordinate Judge of Rae Bareli, dated the 15th February 1907.

The Plaintiffs ask that a Decree for actual and proprietary possession of certain shares in villages in Pargana Salon be passed in their favour against the Defendants, and for an account of mesne profits.

It is unnecessary to enter upon many details of the case. The portion of it which was laid before the Board consists in a demand for cancellation of a Deed of Gift dated the 24th September 1903, executed by one Balraj Kuar in favour of Ganga Bakhsh Singh, son of the Appellant, Kali Bakhsh Singh.

This deed has been upheld by the Subordinate Judge, and has been declared invalid by the Court of the Judicial Commissioner.

It is important to observe what were the grounds for the cancellation of this deed. They are gathered together in the issues framed by the Subordinate Judge, and are as follows :—

“(1.) Did the lady execute the Deed of Gift?”;

(2.) Was it ‘written and completed without her knowledge? Was she able to understand’ the transaction?

(3.) “Was she of unsound mind at the time of the writing of the said Deed?”

The relation of the parties to the Deed was, briefly stated, this :—Balraj Kuar, who died two months after the execution of the Deed of Gift, was a *pardanashin* lady. She was possessed of a number of villages, or rather of shares therein, and she had become absolute owner thereof as the result of gifts made by one Bishunath Singh. At least six Deeds of Gift are produced, and there can be little doubt that the lady thoroughly understood this form of transaction. Her husband had died many years before, namely, in 1881, and her property was managed by Kali Bakhsh Singh, who was her *mukhtar*, and with whom she formed an intimacy, the result of which was the birth of two illegitimate daughters. One of these was alive at the date of the Deed.

Ganga Bakhsh Singh was the legitimate son of Kali Bakhsh Singh, and the suggestion seems to be warranted which points not only to the affection which Balraj Kuar had for Kali Bakhsh, but to the attachment which she had formed to the boy. The interests represented by the Plaintiffs are derived from remote relationship to Brij Mohan Singh, the deceased husband, and to Bishunath Singh, the father-in-law, of the lady.

Upon the issues as framed and the contentions of parties as pled, the Subordinate Judge, who manifestly conducted the case with great

care, had no doubt. As to the Plaintiffs' evidence he holds that it "is absolutely unreliable" and seems to me a pure concoction." Reasons are given for this opinion, and the judgment upon this part of the case does not seem to be controverted in the Court of the Judicial Commissioner. In short, the attack upon the Deed by the evidence led by the Plaintiffs has failed.

As to the evidence tendered in support of it the matter stands thus: *Ex facie*, it is duly signed and attested. It bears the signature of Balraj Kuar, of the Patwari, Lachman Pershad, and of three other witnesses, including the family priest. Above all, there is the certificate of Bunyad Husain, the Sub-Registrar of Salon, as to what occurred when the Deed was produced by Balraj Kuar before him at her residence. It is duly registered. There seems no reason to doubt the value of his testimony, which is believed in its entirety by the Subordinate Judge. Apart from the circumstances to be now mentioned the Deed appears to be beyond suspicion, being attested by just those persons who would be naturally called in for such a purpose and being registered in the usual way by the proper officer.

Their Lordships incline to the opinion that the judgment of the Subordinate Judge would not have been reversed but for the controlling weight which was attached by the Court of the Judicial Commissioner to the fact that the lady in the transaction had not independent advice. The view, put briefly, adopted in that Court is this: The Deed was executed in favour of the son of a paramour, and therefore, to all intents and purposes, in favour of the paramour himself, he also being a person who was her *mukhtar*. Although there is no direct evidence that he ever influenced her to make a gift in favour of his son, still, in the circumstances, the Deed (so it is maintained) must fall, because the law makes an absolute

demand that a person in such a situation should have independent advice. The absence of this element entitles a Court of Law to set the Deed aside.

There are several circumstances which favour this conclusion. In the first place, the lady was a *pardanashin* lady, and the law throws around her a special cloak of protection. It demands that the burden of proof shall in such a case rest, not with those who attack, but with those who found upon the Deed, and the proof must go so far as to show affirmatively and conclusively that the Deed was not only executed by, but was explained to, and was really understood by, the grantor. In such cases it must also, of course, be established that the Deed was not signed under duress, but arose from the free and independent will of the grantor. The law as just stated is too well settled to be doubted or upset. It was expressly re-affirmed by this Board in the case of Sajjad Husain (39 Ind. App., 156), and nothing that is now said can, or is intended to, disturb it.

In the next place, a fact which has given rise in their Lordships' minds to considerable difficulty, has been that Kali Bakhsh, the father of the donee and the *mukhtar* of the donor, was not examined as a witness.

This brief review is given by way of indication that the judgment now to be announced has been arrived at after a full balancing of the considerations both in fact and in law which affect the question to be determined.

The property conveyed by the Deed of Gift amounted, as the Board were informed, to about one-half of the lady's estate. It was not contended that her outward style or mode of life had thereby been changed, or that any impoverishment had occurred, the case being thus distinguished from those of donations of practi-

cally the entire property of the donor, of which the case of Sajjad Husain above referred to was an instance.

There Lordships are satisfied on the salient features of the case as follows :—

1. As to the execution of the Deed. The challenge of this has failed, and both the Courts below hold the execution to be properly and satisfactorily established.

2. As to the capacity of the grantor. Upon this subject the Courts below are also agreed in holding that competency is proved. In their Lordships' judgment, this is so, as after mentioned, in a special degree.

3. As to the Deed being read over and explained. Again both Courts are agreed. But while the Subordinate Judge thinks that the explanation was thorough, the Judicial Commissioners appear to incline to the view that it was perfunctory. Upon this matter much depends upon whether the grantor of the Deed was a person accustomed to business or to the management of affairs. It is upon this point that their Lordships find themselves in agreement with the Subordinate Judge. In doing so they found upon what is admitted, not only by him, but by the Court of the Judicial Commissioner. It appears that the lady had been in the habit for a considerable period of years of managing her affairs, of entering up her accounts, and of attending to business. Upon another part of the case it rather appears from the judgment of the Judicial Commissioner, Mr. Chamier, that the lady had much strength of will, and that her father-in-law, Bishunath Singh "used to obey Balraj Kuar more than the latter obeyed him"; while with reference to the issue now under discussion, the same Judicial Commissioner says, "It is proved by evidence adduced by the Plaintiffs that Balraj Kuar signed her own accounts and

“looked after her own affairs.” Their Lordships, in short, do not entertain much doubt that this *pardanashin* lady was a capable woman, fully alive to the direction of her own interests, and well aware of what she was doing.

4. As to undue influence. Nothing of this kind is proved affirmatively, and the inference upon the subject must depend to a considerable extent upon the view which is taken as to the capacity of the grantor of the deed. The suggestion that Kali Bakhsh prompted a gift in favour of his son does not seem to rest upon anything more than that he was *mukhtar*, or held a power of attorney in regard to the management of her property. It is regrettable that the matter was left thus in the region of conjecture. There is no evidence of any kind that the *mukhtar* either mismanaged or overmanaged anything committed to his charge, or that in any particular regarding her affairs he withstood the lady or controlled her purposes. It is accordingly necessary to consider whether the facts of this case fall under the general and useful category of the principle which, in the language of Lord Kingsdown in *Smith v. Kay* (H.L. Cases VII., 750), “applies to “every case where influence is acquired and “abused, where confidence is reposed and “betrayed.” Their Lordships do not find themselves able to affirm that such abuse or betrayal occurred. It is no doubt true that the evidence in such a case would not require to have been very strong, but there is no evidence at all which would lead to the conclusion.

As stated, their Lordships incline to think that the Judgment of the Subordinate Judge would have been affirmed by the Judicial Commissioners but for the view thus expressed:—“It “is needless to cite authorities to show that “such a gift cannot stand unless it is proved “that the lady had independent advice.”

In their Lordships' opinion there is no rule of law of the absolute kind here indicated. The possession of independent advice, or the absence of it, is a fact to be taken into consideration and well weighed on a review of the whole circumstances relevant to the issue of whether the grantor thoroughly comprehended, and deliberately and of her own free will carried out, the transaction. If she did, the issue is solved and the transaction is upheld; but if upon a review of the facts—which include the nature of the thing done and the training and habit of mind of the grantor, as well as the proximate circumstances affecting the execution—if the conclusion is reached that the obtaining of independent advice would not really have made any difference in the result, then the Deed ought to stand. The present, in their Lordships' judgment, appears to be a case of that kind.

Their Lordships, as already mentioned, have fully in view the fact that the lady was a *pardanashin* lady, but the evidence as to her strength of will and business capacity, and the fact that the Deed as granted is not in the circumstances of her life in any way an unnatural disposition of part of her property, go far, taken together with the evidence in this case, to convince them that the Deed was granted by her as the expression of her deliberate mind and apart from any undue influence exerted upon it. In short their view is that if independent outside advice, which is an essentially different thing from independent outside control, had been obtained, the lady would have acted just as she did. Much as their Lordships support and approve of the protection given by law to a *pardanashin* lady, they cannot transmute such a legal protection into a legal disability. She might, especially if the outside adviser had been a lawyer, have altered the shape or form of

the transaction, but in substance and result she would have carried out the same purpose and will as are expressed by the Deed under challenge. They refer to the Judgment of Lord Macnaghten in *Mahomed Bukhsh Khan v. Hosseini Bibi*. (15 Ind. App. 81).

In these circumstances their Lordships will humbly advise His Majesty that the Judgment and Decree appealed from should be reversed and that of the Subordinate Judge of date the 15th February 1907 should be restored. The Appellants will be entitled to the costs since the date of the last-mentioned Judgment and to the costs of this Appeal.

In the Privy Council.

KALI BAKSH SINGH AND OTHERS

2.

RAM GOPAL SINGH AND OTHERS

DELIVERED BY LORD SHAW.

LONDON:

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1913.