

Privy Council Appeals No. 150 of 1920.

Oudh Appeals Nos. 13 and 14 of 1918.

Khan Bahadur Mohammad Abdul Ghani Khan, since deceased
(now represented by **Mohammad Ibadul Ghani Khan and**
another) - - - - - *Appellants*

v.

Musammat Fakhr Jahan Begam and others - - - *Respondents*

Same - - - - - *Appellants*

v.

Pandit Sheo Dayal and others - - - - - *Respondents*

(Consolidated Appeals)

FROM

THE COURT OF THE JUDICIAL COMMISSIONER OF OUDH.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 21ST MARCH, 1922.

Present at the Hearing :

VISCOUNT CAVE.

LORD SHAW.

SIR JOHN EDGE.

MR. AMEER ALI.

[*Delivered by* SIR JOHN EDGE.]

These are consolidated appeals by the plaintiffs from two decrees, dated the 19th December, 1917, of the Court of the Judicial Commissioner of Oudh, which reversed the decree, dated the 13th July, 1915, of the Subordinate Judge of Kheri, and dismissed the suit.

The suit was brought on the 20th February, 1914, in the Court of the Subordinate Judge by Mohammad Abdul Ghani

Khan and Mohammad Abdul Rahman Khan against Mohammad Hamid Ullah Khan, Musammat Fakhr Jahan Begam, Musammat Asghari Begam, Musammat Chand Bibi and Pandit Sheo Dayal, for the possession of Mauza Mundia Misir, a 4 annas 5 pies share in Mauza Gundhia, and two groves, a house and certain sir land in Jalalpur, and for mesne profits. It was a suit of ejectment on title. The plaintiffs alleged that the right to possession of all the properties in suit was in them as the heirs of Musammat Munni Bibi, who had died on the 16th June, 1906, and that the defendants had no title. The defendants, who are the respondents, were not all jointly interested in any of the properties. Some of the defendants were in possession of some of the properties, others of the defendants were in possession of other parts of the properties in suit, but the different titles of all the defendants originated in a document of the 7th March, 1884, which was executed by Munni Bibi, and has been variously construed as a deed of gift and as a will.

Munni Bibi was the widow of Niamat Ullah Khan, who died childless on the 29th August, 1867. Niamat Ullah Khan, Munni Bibi and the plaintiffs, who were her first cousins, were Mohammedans of the Sunni Sect, and the plaintiffs were, when Munni Bibi died in 1906, her heirs, according to the Mohammedan law applicable to Sunnis. The family to which these Mohammedans belonged had, several centuries ago, been Thakurs professing the Hindu religion, who were converted to Islam, and at one period of this suit it was contended by the defendants, or some of them, that the family had always continued to be governed in matters of succession and inheritance by the rules of the Mitakshara and not by the Mohammedan law. That contention has been abandoned.

Niamat Ullah Khan lived in the village of Jalalpur and was a Taluqdar of Oudh. After the Mutiny of 1857 he received from the British Government the Taluqa of Agar Buzurg, which included, with many villages not now in question, all the immovable property in question in this suit except the 4 annas 5 pies share in Mauza Gundhia, which was granted to Munni Bibi on the 15th November, 1876, by the British Government absolutely in her own right. Although Niamat Ullah Khan had died in 1867, his name was entered as that of the Taluqdar of the Taluqa Agar Buzurg in Lists I and II, which were prepared under Act I of 1869. Instances of the names of other persons who had died before 1869 being entered in those Lists occur.

The British Government granted to Niamat Ullah Khan in his lifetime a primogeniture sanad in which the Taluqa Buzurg is described as the estate of Jalalpur in Zillah Mohamdi. That sanad is as follows:—

“ C. WINGFIELD,
“ Chief Commissioner of Oudh.

“ To

“ NIAMAT ULLAH OF JALALPUR.

“ Know all men that whereas by the Proclamation of March, 1858, by His Excellency the Right Honourable the Viceroy and Governor-General of India, all proprietary rights in the soil of Oudh, with a few special

exceptions, were confiscated and passed to the British Government, which became free to dispose of them as it pleased, I, Charles John Wingfield, Chief Commissioner of Oudh, under the authority of His Excellency the Governor-General of India in Council, do hereby confer on you the full proprietary right, title and possession of the estate of Jalalpur in Zillah Mohamadi consisting of the villages as per list attached to the *Kabuliat* you have executed, of which the present Government revenue is Rs. 5,752 (five thousand seven hundred and fifty-two).

"Therefore this *sanad* is given you in order that it may be known to all whom it may concern, that the above estate has been conferred upon you and your heirs for ever, subject to the payment of such annual revenue as may from time to time be imposed, and to the conditions of surrendering all arms, destroying all forts, preventing and reporting crime, rendering any service you may be called upon to perform and of showing constant good faith, loyalty, zeal and attachment to the British Government according to the provisions of the engagement which you have executed, the breach of any one of which at any time shall be held to annul the right and title now conferred on you and your heirs.

"It is another condition of this grant that in the event of your dying intestate, or of any of your successors dying intestate, the estate shall descend to the nearest male heir, according to the rule of primogeniture, but you and all your successors shall have full power to alienate the estate either in whole or in part by sale, mortgage, gift, bequest, or adoption to whomsoever you please.

"It is also a condition of this grant that you will so far as is in your power promote the agricultural prosperity of your estate, and that all holding under you shall be secured in the possession of all the subordinate rights they formerly enjoyed. As long as the above obligations are observed by you and your heirs in good faith so long will the British Government maintain you and your heirs as proprietors of the above-mentioned estate, in confirmation of which I herewith attach my seal and signature."

The *kabuliat*, mentioned in the *sanad*, related to more than 30 villages and included Mauza Mundia Misir and Mauza Agar Buzurg (Jalalpur), parts of which are claimed by the plaintiffs in this suit. The plaintiffs do not claim any interest in any of the other villages mentioned in the *kabuliat*, and do not contend that Munni Bibi was not entitled to give or bequeath those other villages to whom she liked. As will be seen presently, her title to, and interest in, all the villages mentioned in the schedule to the *kabuliat* was as the devisee of her husband Niamat Ullah Khan.

On the 20th May, 1865, Niamat Ullah Khan made the following will :--

"I am Mohammad Niamat Ullah Khan, Taluqdar of Jalalpur, Pargana Karanpur and Aliganj.

"Whereas the Government has asked for a will from the declarant, and the declarant has no issue and is issueless up to this time, and it is necessary to appoint a legatee after me, I, while in the enjoyment of sound health and perfect intellect, during my life-time, having executed this will, declare that, after me, my wedded wife shall be the owner and possessor of the movable and immovable property, like myself. If the heirs belonging to the brotherhood lay a claim, the same shall be invalid and untenable before the Government. Wherefore I have executed these few presents by way of a will so that it may serve as an authority and be of use in time of need.

"Scribbed by Najju Khan, General Agent. Dated 20th May, 1865.

"NIAMAT ULLAH KHAN,
"Taluqdar of Agar Buzurg."

Under the sanad Niamat Ullah Khan had power to bequeath the Taluq of Buzurg (the estate of Jalalpur) to whom he pleased, and under that will the Taluq passed on his death on the 29th August, 1867, to his widow Munni Bibi. At the date of the will of Niamat Ullah Khan, there were living two younger brothers of Niamat Ullah Khan, of whom Lutf Ullah Khan was the elder, and Ibrahim Khan was the younger. Those younger brothers survived Munni Bibi. One question in this case is whether Munni Bibi was a "successor" of Niamat Ullah Khan within the meaning of the sanad; if she was, she had power to make a gift of, or to bequeath, the whole Taluq or any part of it to whom she pleased. If she was not a "successor" of Niamat Ullah Khan within the meaning of the sanad, she had power to make such a gift as would be recognised as a valid gift by the Mohammedan law applicable to Sunnis, of the whole Taluq or of any part of it to whom she pleased.

On the 7th March, 1884, Munni Bibi executed a document which has been construed by the Subordinate Judge as partly a deed of gift and in part a will, and has been construed by the Judicial Commissioners as a deed of gift. As translated by the official translator it is, so far as is material, as follows:—

" I am Thakurain Musammat Munni Bibi, wife of Mohammad Niamat Ullah Khan, Taluqdar of Mirzapur and Jalalpur, Parganas Bhur and Paila, district Kheri.

" Whereas my husband, during his life-time, bequeathed the entire property of the aforesaid Ilaqa to me, and I, in accordance with the said will, am in possession and ownership of the same; now I, while in sound health and in possession of perfect intellect, without force and reluctance, of my own free will, make a gift of the movable and immovable property, the entire *zamindari* and *lambardari* estate, &c., in favour of Mohammad Lutf Ullah Khan, son of Mohammad Ibad Ullah Khan, the brother of my husband, the detail whereof is being given below, with the exception of the villages and *sir* lands, &c., of the estates, specified below, which shall, during my life-time, remain in my and my relation's possession, free of rent and without payment of Government revenue; and I do hereby invest the donee with the power to have the mutation of names effected in his favour. Now I have nothing to do with the gifted property and estate. I shall keep the villages and *sir* lands, which have been exempted hereunder, for my life-time without the power of alienation by mortgage, sale and gift; and after me, the donee shall also be the owner of the said exempted property. The donee shall pay the Government revenue of the exempted estate from the Ilaqa with the exception of the revenue of Patti village Gandhia, which I shall pay out of my own pocket. The donee shall pay all the debt with which the estate is encumbered,—I, the donor, having nothing to do therewith. Wherefore I have executed these few words by way of a deed of gift on a stamp of Rs. 600.8 by fixing the value of the property at Rs. 60,000 (sixty thousand), so that it may serve as an authority and be of use when required.

" Detail of the gifted immovable property together with the amount of revenue and the boundaries.

.

" Detail of the movable property gifted, Rs. 2,610.

.

" Detail of the property exempted, Rs. 1,555.

“ <i>Pargana Bhur</i> , Rs. 1,490.	<i>Pargana Paila</i> , Rs. 65.
“ Village Mundia Misir, standing in the name of me, the donor, during life, rent and revenue free ... 855	<i>Sir</i> land at Jalalpur, measuring 135 acres ... Rs. 65.
“ Patti Gundhia, standing in the name of me, the donor 280	
“ Gungipur, included in Hindolna, standing in the name of Mohammad Ibrahim Khan ... 355	
“ Dated 7th March, 1884. Scribed by the Registration Clerk.	

“ Mark of the signature of the Thakurain Saheba, wife of Mohammad Niamat Ullah Khan, Taluqdar of Mirzapur, autograph.”

Mr. Kanhayia Lal, in his judgment on the appeal to the Court of the Judicial Commissioner, gives a slightly different translation of part of the document of the 7th March, 1884, as follows :—

“ Now in sound health and full possession of my senses, without any persuasion or compulsion and of my own accord I have gifted my movable and immovable property, all my *zamindari* and *lambaradari* estate, &c., to Mohammad Lutf Ullah Khan, son of Mohammad Ibad Ullah Khan, the brother of my husband, according to the details given below, with the exception of the villages and *sir* land, &c., set out below, name by name, which will remain in my possession for the duration of my life and my dependent relatives (*sic*) free of rent and Government revenue, out of the aforesaid estate. At this time having exempted them I have made a gift, and by virtue of this deed have authorised the donor to get mutation of names made in his favour, and now I have nothing to do with the estate and property gifted; and such villages and *sir* land aforesaid, as have been *at this time for the duration of my life excepted* (left out) will be kept by me without transfer by mortgage or sale or gift for my life-time, and after my death the donee will be the proprietor (*malik*) of the aforesaid excepted property; and of the excepted property the donee will pay the revenue from the *Ilaqa* except of the Patti Mauza Gundhia. Of the Patti Gundhia, I will pay the revenue from my own pocket and the donee will pay all the debts outstanding against the estate. I have nothing to do with them. Therefore these few words have been written by way of a deed of gift of inheritance and proprietorship on a stamp of Rs. 600,8,0 on a stated value of Rs. 7,000 as a title deed which will be useful at the time of need.”

In the opinion of their Lordships there is no material difference between the two translations, they bear the same meaning. It should be mentioned that the punctuation in each translation is the punctuation of the person who made the translation. “ Patti Mauza Gundhia ” was the 4 annas 5 pies share in Mauza Gundhia which the Government had, subject to the payment of the Government Revenue, granted to Munni Bibi absolutely in 1876.

On the execution of the document of the 7th March, 1884, Lutf Ullah Khan got actual possession of all the property

mentioned in it except Mauza Gungipur and the property now in question in this suit. Of the property now in question Lutf Ullah Khan did not obtain physical possession until Munni Bibi died in 1906.

Lutf Ullah Khan mortgaged, on the 27th November, 1907, the 4 annas 5 pies share in Mauza Gundhia for Rs. 11,000 to the defendant Pandit Sheo Dayal. Lutf Ullah Khan died some years later, leaving him surviving his widow Musammat Chand Bibi and his son Hamid Ullah Khan. Hamid Ullah Khan, after his father's death, transferred to his wives, Musammat Fakhr Jahan Begam and Musammat Ashgari Begam, or to one of them, portions of the property now in question. On the 17th January, 1913, there being then due to Pandit Sheo Dayal Rs. 20,000, under the mortgage of the 27th November, 1907, Hamid Ullah Khan, Musammat Chand Bibi and Musammat Ashgari Begam sold the 4 annas 5 pies share in Mauza Gundhia to Pandit Sheo Dayal for Rs. 21,000.

Before referring to the judgments of the trial Judge and in the Court of the Judicial Commissioner, it is advisable to mention some other matters. Niamat Ullah Khan's youngest brother was Ibrahim Khan, who died and left four sons surviving him, of whom Ehsan Ullah was the eldest. Ehsan Ullah and his three brothers on the 20th December, 1910, brought a suit against Hamid Ullah Khan, his two wives, and Mohammad Abdul Ghani Khan and Mohammad Abdul Rahman Khan, who are the plaintiffs in the present suit, and in their plaint, alleging that Munni Bibi had by a will of the 10th June, 1906, bequeathed to their father, Ibrahim Khan, Mauza Mundia Misir, the 4 annas 5 pies share in Mauza Gundhia, and the two groves, the house and sir land in Mauza Jalalpur, all of which are claimed by the plaintiffs appellants in the present suit, asked for a decree for possession. To that suit these plaintiffs appellants offered no defence, and on the contrary the plaintiff appellant here, Mohammad Abdul Ghani Khan, on the 4th November, 1910, wrote to Ehsan Ullah as follows :—

“ Claim for possession.

“ My dear Mohanmad Ehsan Ullah Khan and Abdullah Khan, *raises of Jalalpur.*

“ After affectionate greetings, I write to say that as regards the property left and possessed by my deceased sister, Munni Bibi, the wife of Niamat Ullah Khan, Taluqdar and *rais* of Jalalpur, you enquire about, I do not at all turn against the purport of her will. You can obtain the said property under the will by bringing a suit or otherwise, and I have no objection. You are quite free to take necessary steps. Abdul Rahman Khan too says the same thing. I have enquired from him also.

“ With kindest regards.

“ Yours affectionately,

“ ABDUL GHANI KHAN,

“ Taluqdar of Kukra.

“ Dated 4th November, 1910.”

Mohammad Abdul Ghani Khan was called as a witness for the plaintiffs in the suit of 1910, and on being shown his letter of the 4th November, 1910, said: "This letter I wrote with the permission of my brother Abdul Rahman Khan, who is joint with me," and "I never thought of the matter whether I am entitled to the assets of Munni Bibi or not. I disclaim a share in the property if I am entitled to it." When Abdul Ghani Khan gave his evidence in that suit he was 42 years of age, and it appears to their Lordships impossible to believe that he and his brother had never before 1910 considered the question as to whether they as the heirs in Mohammadan law of Munni Bibi had any claim to any part of the valuable property which had been hers. The plaintiffs in the suit of 1910 failed to prove the execution of the alleged will, and their suit was dismissed.

The learned Subordinate Judge, Mahmud Hasan, who tried the present suit, construed the document of the 7th March, 1884, as a will, so far as it related to the property in question here, and as a deed of gift so far as it related to the other property dealt with by it. He held that Section 41 of the Transfer of Property Act, 1882, did not apply to the cases of Pandit Sheo Dayal and of the other transferees, and as he considered that it was not proved that Munni Bibi's heirs had assented to the bequest by her of the property in question, he gave the plaintiffs a decree for the possession of a two-third share of that property. It should here be mentioned that it does not appear from the record that Pandit Sheo Dayal had given evidence in this suit or that he had made any enquiry as to the title of Lutf Ullah Khan to mortgage, or the title of Hamid Ullah Khan and his mother and wife to sell the 4 annas 5 pies share in Mauza Gundhia. From that decree the defendants Musammat Fakhr, Jahan Begam and Pandit Sheo Dayal appealed to the Court of the Judicial Commissioner. Their appeals raised the question as to the true construction of the document of the 7th March, 1884, and consequently raised the question as to the right of the plaintiffs to maintain this suit. The plaintiffs filed cross-objections.

The appeals and the cross-objections were heard by the learned Judicial Commissioners, Mr. Stuart and Mr. Kanhaiya Lal, and they delivered their very carefully considered judgments on the 19th December, 1917. Mr. Stuart held that under the Taluqdari sanad Munni Bibi was a successor within the meaning of the term "successors" in that sanad, and consequently had an absolute power to give or bequeath the Taluqdari property to whomsoever she pleased, a power of alienation which was not controlled by Mohammedan law. Mr. Kanhaiya Lal was of the contrary opinion; he rightly held that as Munni Bibi obtained her title to the Taluqdari property, not by right of inheritance under the sanad but under the will of her husband Niamat Ullah Khan, she was not a successor within the meaning of the sanad.

In 1921, the Board, in *Ghulam Abbas Khan and another v. Amatul Fatima and others* (48 I.A. 135), which was an appeal

from Oudh, held that the word "successors" in a similar primogeniture sanad meant those designated persons who would succeed in the event of an intestacy, and not persons who took by sale, gift or bequest. Had it not been for Niamat Ullah Khan's will the Taluqdari property would, on his death, have vested by right of inheritance under the sanad in Lutf Ullah Khan, who was the elder of his two brothers. Under the circumstances, Munni Bibi's right to dispose by gift or by will of the Taluqdari property was the right of an owner under the Mohammedan law, and was the same right which she had to dispose of the 4 annas 5 pies share in Mauza Gundhia.

The Judicial Commissioners agreed in their construction of the document of the 7th March, 1884, and held that it was, and operated as a deed of gift, and that all the property mentioned in it passed as a good and valid gift under the Sunni law to Lutf Ullah Khan. They held that Munni Bibi by that deed transferred the corpus of the property, the Taluqdari property and the 4 annas 5 pies share in Mauza Gundhia, to Lutf Ullah Khan, reserving to herself for her life the usufruct of the property in question in this suit. Apparently they based their judgments on a decision of the Board in 1867, in *Nawab Umjad Ally Khan v. Mussummat Mohumdee Begum and others* (11 Moore, I.A. at pages 547 and 548).

It had been contended on behalf of the plaintiffs before the Judicial Commissioners that there had been no possession of this property now in question, given to or taken by Lutf Ullah Khan, and that consequently the gift was void under the Mohammedan law, but they considered that the clear intention of Munni Bibi as shown by her deed was that the title to this property should immediately vest in Lutf Ullah Khan, and that she should have no right to sell, mortgage, or otherwise dispose of the property, and they found that as the usufruct was reserved for her life by Munni Bibi it was not possible for physical possession of the property in the suit to be given to Lutf Ullah Khan in Munni Bibi's lifetime. In the opinion of the Judicial Commissioners everything which was reasonably possible to make perfect the gift had been done and that nothing more was required to make the gift a good gift according to Mohammedan law. The Judicial Commissioners by the decrees of the 19th December, 1917, set aside the decree of the Subordinate Judge, and dismissed the cross-objections and the suit. From the decrees of the Judicial Commissioners these consolidated appeals have been brought.

Their Lordships will now consider whether the document of the 7th March, 1884, may be regarded, so far as the property now in question is concerned, as a Mohammedan will, and if it is not a Mohammedan will, but is a deed of gift, then the question arises whether in the circumstances of this case the gift of this property to Lutf Ullah Khan became a valid gift under the Mohammedan law applicable to Sunnis.

In construing the document of the 7th March, 1884, it has to be borne in mind that in Mohammedan law the broad distinction

between a gift (*hiba*) and a bequest (*wasial*) is that in the case of a gift the immediate right of property in the subject of the gift is conferred, and in the case of a bequest the vesting of the right of property is postponed. Owing to the fact that there is in India no uniform or accurate system of conveyancing, and to the fact that deeds and wills are, in India, as a rule most inartificially drawn up, frequently by persons not possessed of legal knowledge, it is often difficult to ascertain with certainty what was precisely intended by the document, and in some cases to ascertain whether the document was intended to operate as a deed of gift or as a will. Their Lordships have, for the following reasons, come to the conclusion that the document of the 7th March, 1884, cannot be regarded in any respect as a will.

On the 7th March, 1884, Munni Bibi was, as she recited in the document, the owner in possession of the entire property of the Ilaqa (the Taluqa of Agar Buzurg) which her husband had bequeathed to her, and she was also the owner in possession of the 4 annas 5 pies share in Mauza Gundhia; that 4 annas 5 pies share and the Taluqdari property constituted her zamindari estate. As their Lordships read the deed, Munni Bibi by it made a gift to Lutf Ullah Khan of "my movable and immovable property, all my zamindari and lambardari estate, &c." reserving to herself for her life the usufruct of the property now in question, but making it clear that by that reservation of the usufruct she did not reserve to herself any right to transfer by mortgage or sale or gift any part of the property. As their Lordships read the deed it was intended to be and to operate as an immediate and irrevocable disposition of all Munni Bibi's movable and immovable property, and all her zamindari and lambardari estate mentioned in the deed and in the schedules to it, subject to the reservation for her own use during her lifetime of the usufruct of the property in question here, and it must be construed as a deed of gift and not as a will.

The reservation of the usufruct did not by itself make the gift of the property now in question void under Mohammedan law. So far as that is concerned there is the authority of the Board in *Nawab Umjad Ally Khan v. Mussummat Mohamdee Begum and Mussumat Nawab Begum, Afzul Muhul and others* (11 Moore I.A., 517) for that statement as to Mohammedan law, although the parties in that case were Shias and not Sunnis. But in the Courts below and in this appeal it has been contended that the deed of the 7th March, 1884, is void so far as it purported to be a gift of the property in question in this suit on the ground that no possession was actually taken of this particular property, and no mutation of names in respect of this particular property was obtained, by Lutf Ullah Khan until Munni Bibi had died in 1906.

That contention has raised a question by no means easy of solution. The solution of that question depends upon what are the facts here and upon what is the rule of Mohammedan law

applicable to those facts. In considering what is the Mohammedan law on the subject of gifts *inter vivos* their Lordships have to bear in mind that when the old and admittedly authoritative texts of Mohammedan law were promulgated there were not in the contemplation of any one any Transfer of Property Acts, any Registration Acts, any Revenue Courts to record transfers of the possession of land, or any zamindari estates large or small, and that it could not have been intended to lay down for all time what should alone be the evidence that titles to lands had passed. The object of the Mohammedan law as to gifts apparently was to prevent disputes as to whether the donor and the donee intended at the time that the title to the property should pass from the donor to the donee, and that the handing over by the donor and the acceptance by the donee of the property should be good evidence that the property had been given by the donor and had been accepted by the donee as a gift.

For a valid gift *inter vivos* under the Mohammedan law applicable in this case, three conditions are necessary, which their Lordships consider have been correctly stated thus:—“(a) Manifestation of the wish to give on the part of the donor ; (b) the acceptance of the donee, either impliedly or expressly ; and (c) the taking of possession of the subject-matter of the gift by the donee, either actually or constructively.” (“Mahommedan Law,” by Syed Ameer Ali, 4th ed., vol. 1, p. 41.) In their Lordships’ opinion the whole zamindari property mentioned in the deed, and not parts of it only, must, for the purposes of this case, be regarded as one property, the taking possession of any part of it being constructively a taking possession of the whole. The wish of Munnī Bibi to give that property to Lutf Ullah Khan and his acceptance of it on the 7th March, 1884, are clearly manifest from a perusal of the deed which he received and acted upon. The question is, did Lutf Ullah Khan actually or constructively take possession of the property in question in this suit? That he did not, until Munnī Bibi’s death in 1906, take physical possession of Mauza Mundia Misir, the 4 annas 5 pies share in Gundhia or the two groves, the house and sir land in Jalalpur, or apply for mutation of names in his favour in respect of these particular properties, is admitted. On the execution of the deed of gift in 1884, Lutf Ullah Khan did obtain mutation of names in his favour of all the other zamindari property, and from the 7th March, 1884, until Munnī Bibi died in 1906, he paid the Government Revenue which became due in respect of the Taluqdari part of the property now in question. If Lutf Ullah Khan had received after the 7th March, 1884, and before Munnī Bibi died in 1906, any of the rents or profits of the property now in question, he would be held to have received them as a trustee for Munnī Bibi, although the title to the corpus of the property was in him. In their Lordships’ opinion Lutf Ullah Khan must be regarded as having been

constructively in possession, although not in physical possession of the corpus of the property now in question from 1884 until 1906, and the gift was a valid gift.

Their Lordships will accordingly humbly advise His Majesty that these consolidated appeals should be dismissed with costs.

In the Privy Council.

KHAN BAHADUR MOHAMMAD ABDUL GHANI
KHAN, SINCE DECEASED (NOW REPRESENTED BY MOHAMMAD IBADUL GHANI
KHAN AND ANOTHER), AND ANOTHER

v.

MUSAMMAT FAKHR JAHAN BEGAM AND
OTHERS.

SAME

v.

PANDIT SHEO DAYAL AND OTHERS.

(Consolidated Appeals.)

DELIVERED BY SIR JOHN EDGE.

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