Privy Council Appeal No. 24 *of* 1930.
Oudh Appeals Nos. 19 *and* 25 *of* 1928.

Satgur Prasad *alias* **Bhaiya Hari Saran Das** - - - *Appellant*

v.

Mahant Har Narain Das - - - - - - *Respondent*

Mahant Har Narain Das - - - - - - *Appellant*

v.

Satgur Prasad *alias* **Bhaiya Hari Saran Das and others** - - *Respondents*

(*Consolidated Appeals*)

FROM

THE CHIEF COURT OF OUDH AT LUCKNOW.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 18TH JANUARY, 1932.

Present at the Hearing:

LORD BLANESBURGH.
SIR GEORGE LOWNDES.
SIR DINSHAH MULLA.

[*Delivered by* SIR GEORGE LOWNDES.]

These are consolidated cross-appeals against a decree of the Chief Court of Oudh dated the 2nd May, 1928. The appellant in the one case, Satgur Prasad, was the principal defendant in a suit instituted on the original side of the Chief Court, which was decided against him both by the trial Judge and the Court of Appeal. In the other the plaintiff, Mahant Har Narain Das, is the appellant, raising subsidiary questions on which the Court of Appeal had decided against him.

The main issue in the suit was as to the validity of a deed, dated the 25th November, 1924, by which the plaintiff purported to make over a valuable estate and other property to the

defendant-appellant subject to certain conditions. The object of the suit was to set aside this deed on the ground that it was procured by undue influence and fraud. There are concurrent findings of both the Courts in India that this has been established, and they are undoubtedly findings of pure fact. It is not disputed that if they are to stand the appellant cannot escape the decree which has been passed against him.

The practice of this Board with regard to concurrent findings of fact is well established. Such findings will not be disturbed unless it is shown that there has been a miscarriage of justice, or the violation of some principle of law or procedure : *Moung Tha Hnyeen* v. *Moung Pan Nyo*, 27 I.A. 166 ; *Rani Srimati* v. *Khajendra Narayan Singh*, 31 I.A. 127, *per* Lord Lindley at p. 131 ; cited and followed in *Robins* v. *The National Trust* [1927], A.C. 515.

This does not necessarily imply that their Lordships make the findings their own, for, almost *ex hypothesi*, they have not considered them in detail : but only that where matters of fact have been fairly tried by two local Courts, which are often in a better position to conclude upon them than this Board, and the same conclusion has been reached by both, it is not in the public interest that the facts should again be examined in the ultimate Court of Appeal.

Nothing has been suggested, during a two-days' argument for the defendant-appellant, which would bring the case within the principles so laid down, the learned Counsel confining themselves to a searching criticism of the reasons assigned by the learned Judges in the Courts below for the conclusions to which they had come. Their Lordships think that no useful purpose would be served by following their argument through the somewhat unsavoury details so disclosed. They will only record their opinion that no sufficient reason has been shown for disturbing the concurrent findings to which they have referred.

The cross-appeal of the plaintiff raises a question of greater difficulty. Under the decrees of both Courts he is entitled to possession of all the properties sued for. The details were set out in three schedules annexed to his plaint. These are embodied in the decree of the trial Judge, which in this respect was confirmed by the Court of Appeal.

He also claimed by his plaint mesne profits accruing during the possession of the defendant-appellant (hereinafter for convenience referred to as the defendant),* the amount of which he estimated at five lakhs of rupees. There seems to have been no discussion upon this question in the trial Court, the learned Judge merely reciting an agreement of the parties that the issue as to the defendant's liability to account should be left to be dealt with in execution proceedings, ~~which their Lordships understand to be in accordance with the usual practice~~.

* *Note.*—There were two other defendants to the suit, but neither of them has appeared on the present appeals.

In the Court of Appeal, however, it was urged on behalf of the defendant that the account should only go from the date of suit (the 21st February, 1927), and not from the date when the defendant got possession, *i.e.*, approximately the 25th November, 1924. The learned Judges of the Appellate Court accepted this contention, assigning as their reason for so doing "that the document of the 25th November, 1924, was only voidable at the option of the plaintiff, and the plaintiff did not exercise that option earlier than the date of the suit."

It is against this finding only that the cross-appeal of the plaintiff has been pressed, and it is contended on his behalf that, having regard to the conclusion, now established, that the deed under which the defendant got possession was procured by undue influence and fraud, the plaintiff is entitled to the account which he has claimed.

The defendant supports the finding of the Court of Appeal on this question. Mesne profits, it is said, under the definition contained in Section 2 (12) of the Civil Procedure Code, can only be awarded for the period during which the defendant was in wrongful possession, and until the plaintiff elected to avoid the contract under which possession was made over to him, his possession was not wrongful.

But in the first place their Lordships are unable to regard the deed of the 25th November, 1924, merely as a contract voidable at the option of the plaintiff, but good until avoided. It was in effect a conveyance, under which the title to the properties passed to the defendant, and which had to be formally set aside. Before the institution of the suit the defendant could no doubt have made a valid transfer to an innocent purchaser, but it by no means follows from this that as between him and the person he had defrauded his possession was not wrongful. To admit of such an assertion would be to allow him to take advantage of his own wrong, which no court of equity will permit.

If the matter could be regarded as one of contract, their Lordships think that it would fall within the terms of Section 65 of the Contract Act, which provides that "when a contract becomes void"—and their Lordships would have no difficulty in holding these words sufficient to cover the case of a voidable contract which had been avoided—any person who has received any advantage under such contract is bound to restore it to the person from whom he received it, or make compensation therefor.

Regarding the transaction, however, as one that has passed out of the realm of contract, it would seem to be met by Section 88 of the Trusts Act, which has always applied to the province of Oudh. Both Courts in India have found that the defendant stood in a fiduciary relation to the plaintiff, and that he procured the conveyance by taking advantage of this relationship. He

would therefore be bound under the terms of the section to hold any advantage so gained for the benefit of the plaintiff.

But apart from either of these statutory provisions, their Lordships think that the plaintiff is entitled to succeed in his claim upon general principles of equity. So it is stated in Kerr on Fraud and Mistake (6th Edition, 469), dealing with the doctrine of *Restitutio in integrum*, that " a party exercising his option to rescind is entitled to be restored as far as possible to his former position." For this proposition there is ample authority. In *Queen* v. *Saddlers' Company*, 10 H.L.C. 404, at 420, Lord Blackburn says :—

> " Fraud, as I think, renders any transaction voidable at the election of the party defrauded ; and if, when it is avoided, nothing has occurred to alter the position of affairs, the rights and remedies of the parties are the same as if it had been void from the beginning."

In *Dally* v. *Wonham*, 33 Beav. 154, where a purchase by the agent of a vendor was set aside upon much the same grounds as here, the vendor-plaintiff was given an account of rents and profits received by the defendant, from the date of the conveyance, the defendant being allowed credit in the account for all moneys properly expended by him on repairs and lasting improvements, and all sums paid to the plaintiff on account of an annuity which was, as in the present case, part of the consideration for the conveyance.

In *Mulhallen* v. *Marum*, 3 Dr. & War. 317, the Lord Chancellor (Lord Lyndhurst), in setting aside a lease which had been obtained by fraud and undue influence, said, " I shall give an account against the defendant from the time of filing the bill, but not before on account of the delay." In this case eleven years had elapsed since the date of the lease before the bill was filed.

Reference might also be made to the form of decree proposed by Lord Westbury L.C. in *Tyrrel* v. *The Bank of London*, 10 H.L.C. 26, and to *Erlanger* v. *New Sanbrero Coy.*, 3 A.C. 1218.

Their Lordships think that in the case now before them, where there is no difficulty in putting the parties back in the position which they occupied respectively on the 25th November, 1924, and where there is no proof of undue delay on the part of the plaintiff in bringing his suit, he should have an account of the rents and profits of the immoveable properties from that date, the defendant being entitled to credit in the account for all payments made by him to the plaintiff. Interest should be allowed at the usual rate upon both sides of the account.

For the reasons given their Lordships will humbly advise His Majesty that the appeal of Satgur Prasad should be dismissed, and that of Mahant Har Narain Das allowed ; and that the decree of the Chief Court of Oudh dated the 2nd May, 1928, should be varied by substituting for the words " date of the suit " the words " twenty-fifth of November, 1924," and by adding after the words " possession by him " the words " the

defendant-appellant being entitled to credit in the account so to be taken for all sums paid by him after that date to the respondent No. 1, and interest being allowed at the usual rate on both sides thereof." In other respects the decree of the Chief Court will stand.

The appellant, Satgur Prasad, must pay the costs of Mahant Har Narain Das before this Board.

In the Privy Council.

SATGUR PRASAD *alias* BHAIYA HARI SARAN DAS

v.

MAHANT HAR NARAIN DAS.

MAHANT HAR NARAIN DAS

v.

SATGUR PRASAD *alias* BHAIYA HARI SARAN DAS AND OTHERS.

(*Consolidated Appeals.*)

DELIVERED BY SIR GEORGE LOWNDES.

Printed by
Harrison & Sons, Ltd., St. Martin's Lane, W.C.2.

1932.