

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Rajah Ameer Hussun Khan and Sheik Bunde Ally Khan v. Abdool Raheem and Mohummud Nasir, from the Court of the Judicial Commissioner of Oude; delivered 16th April 1872.*

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Present:

SIR JAMES W. COLVILLE.

JUDGE OF THE COURT OF ADMIRALTY.

SIR MONTAGUE E. SMITH.

THE Appellants in this case call upon their Lordships to reverse the decisions of the different revenue authorities in the province of Oude, who, in dealing with this particular case, have all agreed in rejecting the claim of the Appellants. In doing this the Appellants have undertaken a task of considerable difficulty; for their Lordships are by no means inclined to depart from what they stated in the recent case of Hyder Hossain v. Mahommed Hossain, to which their attention was drawn by Mr. Bell, namely, that in dealing with these settlement proceedings in Oude it is even more necessary than it is upon appeals from decisions of the civil courts in the regulation provinces, to act on the principle of not disturbing the judgment under appeal unless they are satisfied that it is substantially wrong.

In the present case the Appellants claim under a deed executed in the Hijree year 1268, corresponding with 1851-2. It was executed to them by one member of a Mohamedan family under circumstances of considerable pressure. The party in question (one Mahomed Nuzur) appears to have been guilty of one of those acts of violence which were not infrequent in Oude at that time, to have come into collision with the authorities, and to have been at the date of the deed actually in prison on a charge of dacoity. In

these circumstances he executed this deed, which purported to convey the villages in question with several others to the Appellants, who are stated to have supplied him with the money necessary to get himself out of prison, and to pay the expenses which he had incurred by reason of his delinquencies.

The property so conveyed had originally stood in the name of one Jaffir Ali, who was the father of Kasim Ali, and the grandfather of Abdool Raheem, the Respondent. Jaffir Ali had also a brother, Golam Ahmed, who had two sons, Imam Buksh and Gholam Mustaza; and the latter was the father of Mahomed Nuzur and Mahomed Reza. Jaffir Ali mortgaged the estate to one Kadim Ali, but it was afterwards redeemed, nominally, by Imam Buksh. The date of this redemption was about 1822, and from that time and until the conveyance the villages appear from the canongoe's evidence to have stood at one time in the name of Gholam Mustaza, and afterwards in that of Mahomed Nuzur. There is nothing, however, in these facts from which it can be conclusively inferred that either before or after the redemption both branches of the family were not jointly interested in the estate, though it may have stood registered in the name of one member of either branch. The Appellants appear to have obtained possession of all the villages comprised in this conveyance except those which are now in question. As to the latter they were met by a claim on the part of one Hajee Tawuk Kool Ally Khan, a eunuch attached to the court of the King of Oude, and apparently a person of influence, who insisted that these villages had been mortgaged to him by Kasim Ali by a deed dated sometime in the Hijree year 1267, corresponding with 1850-51, and therefore earlier in date than the conveyance to the Appellants. It is admitted that the Appellants never succeeded in obtaining possession of the villages comprised in this alleged mortgage; that at the date of the annexation of

Oude the Respondent was found in possession of them; and that a summary settlement in respect of them was afterwards concluded with him. It is clear, therefore, that at least since the date of the conveyance to the Appellants the possession of these particular villages has been either that of the Respondent, Abdool Raheem, or that of the person claiming under him as mortgagee.

The Appellants were therefore in this position, that they, coming in to take the settlement and to establish their title, were seeking to disturb a possession of considerable duration. It has been argued, and the fact seems to have been admitted by the Respondents, that the transaction with Hajee Tawukkool was merely colourable; that there was no real mortgage; and that the deed to him was executed by Kasim Ali merely for the purpose of protecting the property by giving an ostensible interest in it to a person of position and influence. In the present proceedings the Hajee came in and claimed the right of having the settlement made with him as a bonâ fide mortgagee, alleging that the Respondent, Abdool Raheem, had contrived to get into possession whilst he (the Hajee) was absent on a pilgrimage. The decision of the settlement officers was against his claim, and he has not appealed from that decision. The fact, however, that this transaction was merely colourable does not seem to their Lordships to affect the question now before them. It is quite consistent with the Respondent's case, viz., that the villages in question were the property of him or of the family; that Mahomed Nuzur had no power to alienate them; that they did not pass by the conveyance to the Appellants under the conveyance to them, but continued to be held under an adverse title. Again, it has been said, and truly said, that the deed of conveyance on which the Appellants rely has been upheld with respect to the other villages; but the settlement officers in those cases appear to have gone, and, so far as their Lordships can see, have properly gone, upon the fact of possession.

In respect of those villages, the Appellants succeeded in getting into possession ; and, therefore, as to those villages, their title has been allowed to prevail.

As regards the other villages, the Judicial Commissioner has found against them, on the ground of there being no real proof that the member of the family from whom they took had the right to make that conveyance as against the other members of the family ; that they, in fact, have not succeeded in showing a title under which they are in a position to disturb the Respondent's possession.

It is obvious that in exercising the peculiar jurisdiction given to them, and in making the settlement of a province like Oude, of which the recent history and present circumstances are so peculiar, the settlement officers ought to give great weight to possession. In the present case they seem to have had nothing to set against the possession in fact, but a title derived under a conveyance executed in the singular state of society which prevailed in Oude before its annexation, and never perfected by possession ; there being further no clear or satisfactory proof of the right of the vendor of the Appellants to convey.

Their Lordships then, after considering the circumstances of this case, are not satisfied that that Judgment is wrong.

The utmost the Appellants could call upon their Lordships to do is to send back the case to have the question of the title of the vendor of the Plaintiffs as against the other members of the family retried. Considering the investigation which has already taken place in Oude, and the opportunity the Appellants have already had of proving their title, their Lordships think that it would be improper to do this, and that no sufficient grounds have been laid upon which they would be justified in advising Her Majesty to disturb the Judgment that has been pronounced.

Their Lordships must therefore recommend Her Majesty to dismiss this Appeal.