Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Maharanee Inderjeet Koonwur v. Mussumat Ameeroonissa Begum and others, from the High Court of Judicature at Fort William, in Bengal; delivered 2*nd August*, 1872.

Present:

SIR JAMES W. COLVILE.
SIR BARNES PEACOCK.
SIR MONTAGUE SMITH.
SIR ROBERT P. COLLIER.

SIR LAWRENCE PEEL.

THE Appellant is the heiress and representative of the late Maharajah Hetnarain Sing.

That person, whom it will be convenient to designate as the Rajah, in 1852 and 1854, took proceedings to enforce a large claim for arrears of rent, which he had against the estate of one Khawjeh Hossein Aly Khan, who died in 1847. The heirs and representatives of the Khawjeh were his three sons, whom, rejecting their *aliases*, their Lordships will call Sultan Jan, Hossein Jan, and Meerun Jan, and his daughter, Mussumat Potee Begum. Sultan Jan died, pending these proceedings, to which his widow (the Respondent, Ameeroonnissa Begum), his daughter, and brothers, as his heirs and representatives, were then made parties.

The litigation in this matter was extremely complicated. No less than five suits were pending between the parties. Two of them were brought by the heirs of the Khawjeh, and some Kutkinidars under them, to set aside certain summary decisions which had been passed in favour of the Rajah. The other three were brought by the Rajah to enforce different portions of his demand against the estate

of the Khawjeh. All five suits were ultimately heard together, and determined by the principal Sudder Ameen of Zillah Behar on the 30th of December, 1856. He dismissed the suits of the heirs of the Khawjeh, so far as their claims were concerned. In the Rajah's suits he found that the demands of the Plaintiff were established ; that the heirs of the Khawjeh had, by their dealings with his assets, made themselves personally liable for the debts sued for ; but that the Respondent, Ameeroonnissa Begum, and his daughters, were not shown to be in possession of the estate of Sultan Jan, and were accordingly to be dismissed from the suit.

The judgment in the principal suit was in these terms, "That the suit be decreed and that the Plaintiff do recover from Hossein Jan, Meeran Jan, and Mussumat Potee Begum, Defendants, as also from the estate of Sultan Jan, out of the amount under claim, the sum of 1,64,879 rupees, and a fraction and costs of Court with interest on the whole from this day to the day of realization at 1 per cent.; and that Mussumat Ameeroonnissa Begum, and her daughters (by name) be exonerated, and, as stated above, bear their own costs."

Against this decision the two brothers, Hossein Jan and Meerun Jan, appealed to the late Sudder Dewanny Adawlut on two grounds:—1st, that it had not been established by the evidence that they had succeeded to any part of their father's property ; and, 2ndly, that in any case the decree against them should, in conformity with the Mahomedan Law, have been limited to such assets of the Khawjeh as might be traced to their possession. The Sudder Court decided the first of these questions against the Appellants. On the second it took, to adopt the language of the judgment, "an intermediate course." It held that the Appellents were not in a position to claim exemption from a personal decree, and that the Appeal should consequently be dismissed, and the judgment of the Principal Sudder Adawlut affirmed with costs. But it directed that, in execution of that Decree, the Appellents should be entitled to prove, if they could, that the property attached was neither an asset of their father, nor acquired with funds derived from him. Those portions, however, of the sum decreed to the Plaintiff which consisted of rent found due for the

period subsequent to the Khawjeh's death, and of interest which had run on the debt since the date of the Khawjeh's death, were exempted from the operation of this direction. The date of this final Decree was the 30th of April, 1859.

Against these, which may be termed the Decrees in the original or principal suit, there has been no Appeal. It is, therefore, unnecessary to consider the grounds upon which the two Courts proceeded, or whether they correctly applied the principles of the Mohammedan law of succession to the facts before them. For the purposes of this Appeal, the two Decrees must be taken to have conclusively established that the large sum decreed was a debt due to the Rajah from the estate of the Khawjeh; that the sons and daughter of the Khawjeh were jointly and severally liable for that amount, but that, if execution were taken against them, they (or at least Hossein Jan and Meerun Jan) might invoke the benefit of the direction given by the Sudder Court. That is the nature of the Decree, which is the foundation of the present suit. It is not the ordinary Decree against the estate of a deceased debtor.

The Rajah having obtained this Decree, took various proceedings to execute it. Amongst others he caused to be attached and put up for sale, a property in Zillah Sarun, described as Mehal Moteeharee Pergunnah Mujhowa, and also, unless this latter is included in Mehal Moteeharee, a property which may be described as Mouzah Rajpore. Upon this, the Respondent Ameeroonnissa and three of the other Respondents on the record, intervened as objectors, the latter claiming Mouzah Rajpore as purchased by them on the 26th of December, 1852, from one Kazee Ramzan Ali, who, in August 1850, had purchased it from Ameeroonnissa, the former contending that the other heirs of the Khawjeh had disposed of the whole of their ancestral property to Sultan Jan, who, in consideration of 49,000 rupees in cash and a diamond ring, by a deed of sale dated the 19th November, 1847, transferred to her the whole of his interests in Mehal Moteeharee and elsewhere, and that by virtue of such sale and transfer she had been and was in undisturbed possession of the property seised, except so much of it as she had sold. The Judge of Sarun, who had to deal with these

objections gave effect to them on the proof of possession, and released the property from attachment. He declined, however, to express any opinion as to the validity of the transactions under which the Respondent Ameeroonnissa claimed to have acquired the property.

The Rajah also attached, in execution of his decree, other property known as Mouza Deodha Chutturwar and situate in Zillah Behar; and this, on the objection of Mohunt Dabendor Pooree, was released on the 30th November, 1860, by the Principal Sudder Ameen of Zillah Behar. The proceeding is at p. 106 of the Record.

These proceedings occasioned the institution of the present suit. Its object was to recover the amount due under the Decrees of the 30th of December, 1856, and the 30th of April, 1859, by the sale of the rights of the Defendants, the heirs of the Khawjeh in the properties specified, which the plaint treated as having all formed part of the Khawjeh's estates; and, in order thereto, it sought to have the various deeds and proceedings, on which the objections taken in the execution proceedings had been founded, set aside and declared void. The properties in question may be divided into the following classes :—

1st. Mouzah Deodha Chutturwar which had been purchased at an execution sale in a suit against Sultan Jan by the Mohunt Dabendo Pooree, and other persons Defendants on the record.

2ndly. Fourteen annas of Mouzah Rajpore being part of the estate of the Khawjeh alleged to have been transferred by Sultan Jan to the Respondent Ameeroonnissa Begum, and to have been afterwards sold by her to Cazee Ramzan Ali, and by him sold to the present possessors who were made Defendants on the record.

3rdly. Other property, formerly part of the estate of the Khawjeh alleged to have been transferred by Sultan Jan to Ameeroonnissa Begum, and still in her possession.

4thly. Four annas of the Ramnugger estate which were treated as in the possession of the Defendant Budhoo Singh under a title derived through the Defendant Furkhondee Begum who alleged herself to be the second wife, and as such an heir and representative of Sultan Jan.

The Decree of the Principal Sudder Ameen, made on the 18th of July, 1862, dismissed the suit so far as it related to the property comprised in the first, second, and fourth of the above classes; but directed that the property comprised in the second class should be sold in satisfaction of the amount due to the Appellant under the principal Decree; thereby setting aside the title of the Respondent, Ameeroonnissa, in that property.

There were cross appeals against this decision to the High Court, which, by a Decree dated the 31st of August, 1863, dismissed the suit altogether.

The present appeal is against both Decrees, so far as they are unfavourable to the Appellant. None of the Respondents have appeared at their Lordships' Bar except Ameeroonnissa Begum, represented by Mr. Bell; and the representatives of the Mohunt represented by Mr. Doyne.

It was, however, admitted early in the course of the hearing, that the fourth class of the property claimed, and the case against Budhoo Sing, might be dismissed from consideration. This property is a four-anna share of the estate of one Rajah Perhlad Singh, the title to which was founded on an alleged purchase by the Khawjeh pending a suit by the Rajah for the recovery of the whole estate; and that title has since, in a suit brought by Budhoo Singh to enforce it against the last-named Rajah, been decided to be invalid.

The claim of the Appellant to the property comprised in the first class was afterwards also given up, the learned Counsel for the Appellant finding that, upon the evidence, they could not successfully resist the title of the purchasers under the execution sale in the suit against Sultan Jan. There was evidence in the case, uncontradicted, which went to show that Deodha Chutturwar, though it once belonged to the Khawjeh, had been transferred by him in his lifetime to his two sons, Hossein Jan, and Meerun Jan; and after his death had passed from them to Sultan Jan in the circumstances which will be afterwards mentioned.

The contention, therefore, between the parties on the appeal was reduced to the properties included in the 2nd and 3rd classes, and to the case made as to these against Ameeroonnissa Begum, and the purchasers from her.

The title of Ameeroonnissa to all the property, as set forth by her in her pleading in the present suit, and more fully in her objections taken in the execution proceeding of the 4th of May, 1860, is, that it was sold and conveyed to her by her husband Sultan Jan in consideration of 49,000 rupees in cash and a diamond ring, under a Kowala or deed of sale, dated the 19th of November, 1847, Sultan Jan having previously acquired the interests of the other heirs of the Khawjeh in his estate. This bill of sale is not to be found in the present record, though it appears by the Judgment of the 30th of December, 1856, that the document, or at least a copy of it, was filed in the original suit wherein Ameeroonnissa contended that she was not in possession of any part of her husband's estate in the character of an heir. Again, no proof—certainly no satisfactory proof, has ever been given of the payment of the 49,000 rupees, or of the delivery of the ring.

In these circumstances the Principal Sudder Ameen who tried this cause, came to the conclusion that the conveyance from Sultan Jan to his wife was a fictitious transaction; that the property which was the subject of it continued to be part of his estate; and that so much of it as remained in her hands was subject to be attached and sold in satisfaction of the Appellant's Judgment debt. The High Court again, in reversing this decision, did not find the sale to have been proved as alleged; but proceeding upon the evidence afforded by the proceedings in another suit, came to the conclusion that, as between the Appellant and the Respondent Ameeroonnissa, the title of the latter must prevail.

These proceedings consist of the decision of the Principal Sudder Ameen of Behar dated the 30th of November, 1860, which is to be found at page 109 of the Record. From that decision it appears that, in the year 1858, Ameeroonnissa brought a suit against Hossein Jan and Meerun Jan and others, claiming under them, in order to set aside a Mokurruree Pottah granted by her of part of her own estate in favour of Hossein Jan and Meerun Jan, and to recover possession of the property therein comprised.

The Rajah Hetnarain Singh intervened in that suit, alleging it to have been instituted collusively, and, in order to prevent his taking and selling the Mokurruree tenure as part of the estate of the two

brothers, in execution of his decree against them. Whether he had then actually attached the property does not clearly appear; but it may be inferred from the form of the final order in the suit that he had done so. The issues settled in this suit were, 1st, whether the Mokurruree Ticca Pottah and deed of Ikrahnamah were collusive, fraudulent, and executed unknown to the Plaintiff, or whether they were executed *bonâ fide* with her knowledge, and the consideration paid to her; 2ndly, whether the suit was got up in collusion between the Plaintiff and Defendants with intent to defraud the Rajah of the decree money.

The second issue was not tried, because the principal Sudder Ameen on the first, proceeding on the evidence taken in the suit, and, in particular, on the depositions of the Defendants, Hossein Jan and Meerun Jan, one of which has been produced in the present suit, came to the conclusion that the Mokurruree tenure had been granted by Ameeroonnissa; that it belonged to the two brothers, and that, as their property, it was subject to be seized and sold in execution of the Rajah's decree; and he directed it to be sold accordingly.

The facts as found by the Principal Sudder Ameen in respect of this transaction were the following: — Hossein Jan and Meerun Jan were in possession of Deodha Chutturwar, under the grant made in their favour by their father in his lifetime. On his death, it was agreed amongst his sons and Ameeroonnissa that she should grant the Mokurruree tenure to Hossein Jan and Meerun Jan, they conveying their interest in Deodha Chutturwur, and also their shares in their father's estate, to Sultan Jan; and that the latter should retain Deodha Chutturwar, but should transfer his whole interest in his father's estate to Ameeroonnissa. This was accordingly done.

The view taken by the High Court of this transaction, and of the Decree made in the suit upon it, appears to be that, admitting the expressed consideration for the conveyance of the 19th of November, 1847, to be merely nominal, there was in the grant of the Mokurruree tenure by Ameeroonnissa out of her own estate, and in the retention with her consent of Deodha Chutturwar by Sultan Jan, a consideration moving from her sufficient to

support the transfer to her of the Khawjeh estate; and that at all events the Appellant, whose husband had taken the benefit of the Decree of the 30th of November, 1860, and of the execution thereby awarded against the Mokurruree tenure, could not dispute the sufficiency of that consideration.

In this view of the High Court their Lordships would have been disposed to concur if they were satisfied that the defence to the suit which it involves had been clearly pleaded and regularly tried; but it appears to them extremely doubtful, to say the least, whether the Appellant had the means, which she ought to have had, of meeting such a case. The title of Ameeroonnissa, as pleaded, rests upon a conveyance, in consideration of the 49,000 rupees and the ring. It is true that the particular consideration is not expressed in, nor made part of, the 4th issue settled in the cause, which is merely "whether, by virtue of a *boná fide* Kobala (*i.e.*, without collusion and fraud), executed by her husband, the Defendant was in possession of the property sold." But it is not the less possible that the point taken by the High Court was a surprise upon the Plaintiff. There is no trace of its having been taken by Ameeroonnissa in the Court of First Instance. The Judgment of the 30th of November, 1860, on which it was founded, was no part of the evidence adduced by her. It was put in by Mohunt obviously with the object of proving the title of Sultan Jan to Deodha Chutturwar.

In these circumstances the Lordships have come to this conclusion that they ought to give the Appellant the option of having the case, as between her and the Respondent Ameeroonnissa, remanded for retrial upon the issues which will be afterwards stated.

Two other points, however, which were taken by the learned Counsel for the Appellant remain to be noticed. It was urged by them that even if the transactions amounted to a valid transfer to Ameeroonnissa it was at most a transfer of the shares of Hossein Jan and Meerun Jan in the patrimonial estate; and did not include the shares of Sultan Jan and Mussumat Potee Begum. Their Lordships are, however, of opinion that the transfer, if valid for any purpose, transferred all the interest of Sultan Jan in his father's estate, however derived; and that

the desire to effect this (if the transaction was *bonâ fide*) was probably the reason why the shares of the brothers were assigned by them to Sultan Jan in the first instance, and not directly to Ameeroonnissa. And, looking to the Ikrahnameh of the 5th of July, 1847, and to the written statement of Mussumat Potee Begum, their Lordships must also hold that, whatever may be her rights against Sultan Jan's estate, she had effectually vested her share in her father's estate in him before the transfer to Ameeroonnissa Begum.

The other question to be considered is, whether the Appellant is right in contending that the title of the purchasers from Ameeroonnissa Begum must stand or fall with her title; or whether the distinction taken by the Principal Sudder Ameen, and confirmed by the High Court, may not be supported. Their Lordships are disposed to agree with the Indian Courts in their conclusion. Both Courts must be taken to have found that Cazee Ramzan Ali, and the purchasers from him were purchasers for value. Nor has that fact been disputed at the bar. No doubt, in ordinary cases, the purchaser does not acquire a better title than that of his vendor; but, in the present case, their Lordships see no ground for impeaching the transfer of the shares of Hossein Jan and Meerun Jan and their sister to Sultan Jan. They conceive that those transfers, whether the Courts which decided the original and principal suit were right or wrong in holding that they left the co-heirs liable for their father's debts, effectually transferred the assets, and the dominion over them to Sultan Jan. If, then, the subsequent transfer by Sultan Jan to his wife is to be regarded as a merely fictitious transaction, it left the property, subject to the payment of his father's debts, in the dominion of Sultan Jan. Holding it in that capacity he had power effectually to transfer any part of it by a sale for value; and their Lordships are of opinion that there is sufficient evidence to justify the conclusion of the Principal Sudder Ameen that the sale to Ramzan Ali was made with the knowledge and concurrence of Sultan Jan; and if not a sale by Ameeroonnissa of what belonged to her, must be taken to have been a sale by her husband, effected in her name.

The result of their Lordship's Judgment is that

they ought humbly to recommend Her Majesty to dismiss this Appeal as against the parties represented by Mr. Doyne, with costs; and as against the Respondents who have not appeared, without costs. As regards the question between the Appellant and the Respondent Ameeroonnissa, their Lordships, if the Appellant desires it, will recommend Her Majesty to remand the suit to the High Court, with directions to retry the same as between those parties, and under the provisions of sec. 354 of Art VIII of 1859, upon the following issues:—

1st. Whether the property of the late Khawjeh Hossein Aly Khan was really and in good faith transferred by Sultan Jan to the Respondent Ameeroonnissa Begum in consideration of the grant by her of the Mokurruree tenures out of her own estate; and,

2ndly. Whether, regard being had to the proceedings in the suit No. 27 of 1858, and to the decision therein of the Principal Sudder Ameen, dated the 30th of November, 1860, the Appellant is precluded from disputing that the property was *bonâ fide* so transferred to the Respondent.

If the case should go back to India, the costs of this Appeal, as between the Appellant and the Respondent Ameeroonnissa should be taxed, and be hereafter paid and received as part of the costs in the cause, according to the final result.

Their Lordships, however, whilst they give to the Appellant the option of a remand to which they think she is in strictness entitled, throw out for the consideration of both parties, whether it may not be better for both to avoid further litigation by consenting to the dismissal of this appeal, as against Ameeroonnissa, without costs.

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