

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
Ujhol Mandul v. Sona Bebee and another,
from the High Court of Judicature at Fort
William in Bengal; delivered February 5th,
1874.*

Present :

SIR JAMES W. COLVILLE.
SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.

SIR LAWRENCE PEEL.

THE points which have been made in support of this Appeal are upon questions of fact, upon which the opinions of both the lower courts were concurrent against the Appellant.

With reference to the first point, as to the disposition alleged to have been made by the father in his lifetime, their Lordships are clearly of opinion that there is no ground whatever for reversing the decision of the High Court, and in fact that point was almost given up during the argument.

Then with regard to the second point, the Defendant in his written statement alleges that he, with his own funds, purchased the lot which is the item No. 1 in the schedule annexed to the plaint. The question is whether the courts were wrong in finding that it was not purchased by him with his own funds.

Whatever doubt might have been in the minds of their Lordships if they were trying this case for the first time, they are of opinion that there is not sufficient to induce them to come to

a conclusion that the findings of both the lower courts upon this point were wrong. It was expressly found by the subordinate judge who tried the case in the first instance as follows:—"It does not appear from the evidence that Ujhol Mundul paid in ready money the consideration of the property No. 1." Further he says, "There is not a tittle of evidence that at that time the Defendant had a separate fund of his own. Consequently there can be no doubt that the kobala was ostensibly written in the name of the Defendant, and that his father and his co-sharers were the owners of the property covered thereby." That question of fact was determined also by the High Court in accordance with that view.

Then again, the Rajah's son, who was called as a witness, says, "I was not acquainted in detail with the particulars written in the kobala;" and in answer to a question he said "At the time of the execution of the kobala no money passed." Now if the Appellant had paid the money and had been the purchaser of that portion of the property in his own right and on his own account, he would at the time of the execution of the deed have paid over the money to the Rajah as the consideration for the purchase; and then the Rajah would have paid over the money which he received from the Appellant in satisfaction of the decrees. He further said in answer to another question, "I do not remember whether or not Ujhol was present in the assembly in which the kobala (bill of sale) was written. I remember that Saduck and Bhowanee Mundul were present." If the two brothers were present at the time when this deed was executed, the presumption is that it was for the purpose of receiving satisfaction of their decrees, and if Ujhol, the Appellant, had paid

the money out of which the Rajah was to satisfy those decrees, there would have been some evidence that the money passed at that time, and that it was handed over by the Rajah to Saduck and Bhowanee, who were the holders of the decrees.

Upon the whole of the evidence their Lordships are of opinion that there is not sufficient ground for reversing the decision of the High Court; and under those circumstances they will humbly recommend Her Majesty that this Appeal be dismissed.

