

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Mungul Das v. Mohunt Bawun Das, from the High Court of Judicature at Fort William in Bengal; delivered 27th June 1877.

Present:

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

THE Appellant in this case is Mungul Das, who was Defendant in a suit brought against him by Gureeb Das as the Mohunt of the Asthul of Jankinuggur, situated in Zillah Purneah. The suit was brought to recover possession of 11 parcels of land, which are specifically described in the schedule to the plaint. A considerable portion of those lands being in the district of Bhaugulpore, and a portion of them in Zillah Purneah, under an order of the High Court the suit was tried by the subordinate Judge of Bhaugulpore. He dismissed the suit except as to No. 6. The case was appealed to the High Court, and that Court reversed the decision of the district Judge and gave the Plaintiff a decree for the possession of all the property claimed except Nos. 5 and 6. Lots 5 and 6 are therefore altogether out of the question in this appeal. The lots with which their Lordships have to deal are the other nine. The Defendant claims lots 1, 2, and 4 under a deed of sale from Balgobind, who was the former Mohunt of the Asthul. The deed which was put in evidence is dated 15th August 1860, and purports to be a conveyance

of the property to the Defendant in consideration of the payment of Rupees 8,000. The Judge of the Lower Court has in his judgment shown the succession of the different Mohunts of the Asthul—Luchmun Das, Bhugwan Das, Girdhary Das, Joyram Das, and Balgobind Das. Joyram Das died in 1858, but before his death he executed to the Defendant a mooktarnamah on the 13th November 1854. That document will be found at page 62 of the Record. He thereby appointed the Defendant mooktar and karpurdaz, and declared as follows, “the aforesaid mooktar and
“ karpurdaz shall on my behalf attend the
“ aforesaid Courts, and shall look after the cases
“ pending in those Courts; he shall give vaka-
“ lutnamas in my behalf by his own pen to
“ and appoint pleaders of the Civil Courts in
“ any case whatever; he shall apply for
“ taking out the jaghir money; he shall on
“ giving receipt signed by him on my behalf
“ take out money; he shall deposit money
“ on account of the debt of others; he shall
“ get the collection papers explained to him by
“ the putwari; he shall (settle) the estates lying
“ in the mofussil appertaining to the Asthul.”

Subsequently, on the 5th of Sawun 1265 Joyram executed another deed, by which he appointed Balgobind Das proprietor of the guddi. At page 23 he says:—“I have of my own free will
“ and accord appointed during my lifetime my
“ *chela* Balgobind Das as the proprietor of the
“ guddi, and have made him the guddinushin
“ mohunt of the two afore-mentioned asthuls
“ (of which one was the Asthul of Jankinuggur)
“ associating Mungul Das with him as the kar-
“ purdaz. I have made him proprietor of the
“ estates appertaining to the aforesaid Asthuls.
“ It is requisite that the aforesaid chela should
“ act according to the advice of the karpurdaz.
“ He should only take his seat on the guddi,

“ and perform the service and poojah of Sri
 “ Janki Bullubhji Thakoorji (above-mentioned
 “ idol). The karpurdaz will have the power
 “ and authority over the affairs and lawsuits
 “ of both sudder and mofussil. Should he
 “ execute any deed or document, pottah or
 “ kubulyut, &c., without the signature of the
 “ karpurdaz, it will be held null and void.
 “ Should he not act according to the advice
 “ of the karpurdaz he will be removed
 “ from the guddi.” It was proved in evi-
 dence that the Defendant, as karpurdaz and
 mokhtar, was employed in the collection of the
 rents of the estates belonging to the Asthul.
 The deed of the 15th August 1860 is attested by
 several witnesses, but none of them were called
 to prove the execution by Balgobind Das. Other
 deeds have been put in evidence; as to some of
 them it is expressly stated that they are signed
 with the pen of Balgobind Das, but the deed
 of the 15th August 1860 has merely got the
 name of Balgobind Das attached to it without
 any express statement that it was signed by his
 pen. Another document was put in evidence,
 and it appears that when it was presented for
 registration the parties who presented it attested
 not only the execution of it but also the receipt
 for the consideration money (see page 64).
 With regard to the deed of August 1860, how-
 ever, although it was presented for registration
 by the agents of both parties, neither of them
 took upon themselves to verify that the 8,000
 Rupees stated as the consideration were actually
 paid. The Mooktar of Balgobind merely stated
 that his client had signed, sealed, and executed
 the deed of sale. Roop Lal Das, the putwari of
 Jankinuggur, says: “ Mungul Das was the kar-
 “ purdaz from the time of Mohunt Joyram Das
 “ up to 1277 F. Mohunt Joyram Das died in
 “ 1265 F. Mungul Das had the charge of the

“ collection of rents, and the tuhvil. Kantahi,
“ Pathurghat, &c. (describing lots 1, 2, and 4),
“ were through the fear of execution of decree of
“ the Court of Wards fictitiously sold to Mungul
“ Das. I am the putwari of Jankinuggur; for
“ this reason I am acquainted with these facts.
“ The seal was kept in the charge of Mungul
“ Das. The aforesaid deed of sale was signed
“ by himself and sealed by Mungul Das. The
“ towji (money) of 1277 F. of all the disputed
“ estates came to the Asthul of Jankinuggur.”
Then as to No. 4, in another part of his evidence
he says: “The deed of sale of Pathurgat, &c.
“ was drawn up by Koonji Lal, the mokhtar
“ of Purneah. It was signed by Mungul Das
“ on behalf of Mohunt Balgobind Das. He
“ also affixed the seal. Balgobind Das was not
“ present in the assembly where the sale was
“ made, and the kobala was drawn up. I do
“ not know whether the fact was known to
“ Balgobind Das or not. This sale was ficti-
“ tiously drawn up to evade the decrees of the
“ creditors.” So according to this evidence
the deed was merely a fictitious one drawn up
by Mungul Das, the Defendant, and sealed by
him with the seal of Balgobind merely to
protect the estates from execution creditors, and
no consideration money appears to have been
paid for the conveyance. At page 161 Prem
Das confirms that evidence. He says, “At
“ the time of Balgobind Das a deed of sale
“ was executed in the name of Mungul Das in
“ respect of mouzah Kantahi Kankur, Bishen-
“ pore, and Pathurgat. The deed of sale was
“ executed in 1277 F. This took place about
“ 12 years ago. This deed of sale was fictitiously
“ drawn up without payment of any consideration
“ on account of the execution suit of Mr. Palmer
“ and the Court of Wards in charge of the
“ Darbhanga estate, Another deed of sale of

“ Dhurumpore was fictitiously drawn up in my
 “ name. The sum of Rs. 20,000 was specified
 “ as consideration in my deed of sale. Mungul
 “ Das used to get food, and he had full authority.”
 The subordinate Judge in delivering his judgment with reference to this deed says that from the date of the kobala, that is 1860, it does not appear to him to be in any way connected with the management of the Mohunt. By that observation their Lordships understand him to mean that the deed of sale being in 1860 the Defendant was not then acting in the management of the estate. The Defendant in his evidence at page 167 says, “ By virtue of the aforesaid mokhtar-
 “ nama”—that is speaking of the mokhtarnama signed by Joyram Das—“ I remained mokhtar
 “ during the lifetime of Joyram Das. After him
 “ in the time of Balgobind Das for two years.”
 If the Defendant were mooktar for only two years in the time of Balgobind, the latter having been appointed in 1854, he would have ceased to be mooktar in 1856, and there would have been no connection between the deed and the management. But it appears clearly from the petition which Mungul Das, the Defendant, put in when he claimed to be the Mohunt that he continued in the management of the estates down to a period subsequent to the death of Balgobind, which did not take place till 1868 or 1869.

Looking at the whole of the evidence with regard to the above-mentioned three parcels of land, their Lordships have come to the conclusion that the High Court correctly decided that the property was not *bonâ fide* conveyed to the Defendant, for his own use, but that it was a mere pretended sale to protect it from creditors.

The next portion of land is No. 3,—that is Mouzah Pooraini Kallan, 5 ans. 4 pies, out of the entire 16 annas of Mouzah Purneah. That

estate did not originally belong to the Asthul. It was purchased in execution of a decree. The certificate of execution is dated 24th December 1866. It appears that upon the execution of a decree passed by the Principal Sudder Ameen of Purneah against Rajah Naen Singh and others, the interest of Rajah Naen Singh, the judgment debtor, was sold for Rs. 12,200 to the Defendant. The evidence is that the Defendant borrowed the money for the purchase of the estate from Mohesh Lal, a banker. The evidence upon that point is the evidence of Baijnath Sahai. It is at page 170 of the Record. He says that he was Gomashta of Mohesh Lal. "I knew Mungul Das. He has transactions with our firm. When Mungul Das purchased the right and share of Rajah Ram Singh of Poraini, then, according to my account, on one occasion Rs. 3,050 were paid as earnest money through Komla Pershad, the Mokhtar in the Civil Court, and on another occasion Rs. 9,150, the balance of the purchase money from our firm. Out of the above amount Mungul Das sent me notes of Rs. 4,000. This item is also entered in my account book. The revenue of Pooraini, Bishenpoore, Kantahi, and Kanhur is paid on behalf of Mungul Das through our firm." At page 169 Komla Pershad, by profession a Mokhtar, says, "On the day I purchased it at auction I brought the earnest money of it from the firm of Mohesh Lal, the banker, and paid it into court. Afterwards Mungul Das gave me, at Purneah, notes of Rs. 4,000 and one letter of permission on the firm of Mohesh Lal. I made over all those notes to Mohesh Lal and took the balance of the purchase money from the aforesaid firm and paid it in the court." At page 163 Roop Lal Das says that the estate was purchased benamee. He says, "Mouzah Pooraini was purchased on account of the

“ Asthul of Jankinuggur, but in the fictitious
“ name of Mungul Das.”

Their Lordships are not disposed to act upon that evidence alone. They think it is established that the estate was purchased with money borrowed by Mungul Das. The estates of the Asthul were not charged as security for the money which was apparently borrowed solely upon the personal security of Mungul Das, and there is no sufficient evidence to prove that the money paid for the purchase of Lot 3 was the money of the Asthul. The Defendant is, therefore, entitled to succeed as regards that parcel of property. Even if the property had been purchased by Mungul Das benamee under an agreement with the Mohunt that it should be purchased by him benamee for the Mohunt, it would be a question whether section 260 of Act 8 of 1859 would not prevent the Plaintiff from suing to recover it.

That disposes of Nos. 1, 2, 3, and 4; Nos. 5 and 6 are already disposed of, and we now come to consider No. 7. No. 7 is a mere claim to 25 bighas with an annual receipt of 12 annas and 8 pies. It was purchased as parcel of a lot containing 611 bighas by Mungul Das, Luchman Das, and Prem Das; but they were gossains at the time and inhabitants of the Asthul, and consequently, as stated by the High Court, are not persons likely to have had money with which to purchase property. It was purchased on the 28th of March 1854, and subsequently, on the 1st of April 1860, Prem Das and Luchman Das transferred their supposed interest, that is, two thirds of the estate, to the Defendant, Mungul Das. Their Lordships are of opinion, looking at the evidence in the case, that this estate was purchased by Mungul Das with the money of and for the benefit of the Asthul, and consequently that

the Plaintiff is entitled to succeed as to that parcel.

The only remaining parcels are Nos. 8, 9, 10, and 11. Those parcels were the property of the Asthul, but were seized in execution under a decree which Mr. Palmer had obtained against the Mohunt. They were sold on the 8th of Assin 1276, corresponding with the 21st of June 1869, for the sum of Rs. 5,849, and purchased by the Defendant Mungul Das with money which he had borrowed from Luchmi Narain. The bond given on the occasion of that loan is at page 103, and is as follows: "I (Mungul Das) have borrowed the sum of Rs. 9,000 in cash from Sri Baboo Luchmi Narain, inhabitant and proprietor of Mouzah Mansoorgunge, Pergunnah Kahalgaon, on interest at the rate Rs. 1—8 annas per cent. per mensem. I do hereby declare and give in writing that I shall pay the principal with interest at once in the month of Aughran of the year 1278, that so long as the aforesaid amount, principal with interest, is not paid, I have mortgaged the one third share, that is, 5 annas, 6 gundas, 2 kowris, 1 kanis out of the whole 16 annas of Mouzah Pooraini Kallan." The description is that of No. 3, which is now according to their Lordships' decision the property of Mungul Das himself. Then it describes the other parcels of land, 1, 2, and 4. The effect, therefore, of the transaction was that he obtained the Rs. 9,000 in cash from Luchmi Narain upon a mortgage of four parcels of land, of which three, viz., Nos. 1, 2, and 4, belonged to the Asthul. Mungul Das in his evidence at page 168, line 12, says, "The right and interest of Balgobind Das in Santnugger, &c. were sold in execution of the decree of Mr. Palmer. I purchased them for 5,000 and odd rupees. This took place about five years ago. I have been

“ in possession since that time. I borrowed the
 “ sum of Rs. 9,000 from the firm of Baboo
 “ Luchmi Narain and paid the purchase money
 “ and the amounts due to other creditors.”
 Therefore, according to his own evidence, he
 purchased that estate at the auction with money
 which he had obtained from Luchmi Narain
 upon the mortgage, amongst other property, of
 the three parcels, Nos. 1, 2, and 4, which
 according to their Lordships’ decision belonged
 to the Asthul. There is no evidence to show
 that the lots were purchased benamee; but
 Mungul Das treating as his own property lots
 Nos. 1, 2, and 4, which have been now decided to
 belong to the Asthul, mortgaged them, raised a
 sum of money upon them, bought these lots, 8, 9,
 10, and 11 in his own name, and appropriated
 according to his evidence the rents of those estates
 to his own use, and never handed over the
 property to the Asthul. It, therefore, appears that
 he, being a trustee, raised moneys upon the estates
 of his *cestui qui* trusts, and with that money
 bought Nos. 8, 9, 10, and 11. Under those cir-
 cumstances their Lordships think that the Plain-
 tiffs are entitled to the lots so purchased. The
 Gomashta in his evidence states that the debt to
 Luchmi Narain was paid off. That, however, is
 not very important, for the lands which had
 been mortgaged to Luchmi Narain were, by a
 bond dated 12th May 1872 (p. 136), mortgaged
 to Mohesh Lal as a security for Rs. 20,000 which
 were borrowed for the purpose of, amongst other
 things, paying off the bond given to Luchmi
 Narain (see p. 170). That being so, the case is,
 in effect, the same as if Luchmi Narain had not
 been paid off; and their Lordships think that
 Mungul Das, having the charge of the estates
 and having pledged them in this way to Mohesh
 Lal, the Plaintiffs are entitled to recover Nos. 8,
 9, 10, and 11, which were purchased out of the

proceeds of the money so borrowed on the security of the estates.

Their Lordships have no distinct evidence as to the state of accounts between Mungul Das and the Asthul. It appears that he was in the habit of collecting their rents; that he had the appointment of mookhtars; and that the Mohunt was to act under his directions. It appears that he has collected the rents, and has also, according to his own evidence, been in receipt of the rents of Nos. 1, 2, and 4 from the time when they were so purchased. If Mungul Das, who has not only pledged the estates of the Asthul Nos. 1, 2, and 4 to Mohesh Lal as a security for the Rs. 20,000, but has rendered himself personally liable for the amount, pay off the debt and get the estates released from it, then on the settlement of his accounts he ought to be entitled to charge as against the estate the 5,849 Rs. borrowed. So if the Mohunt claim from him the mesne profits of Nos. 1, 2, and 4, he ought, if he pay off the Rs. 20,000 and get Nos. 1, 2, and 4 released from the mortgage, to be entitled as against the Mohunt to set off the 5,849 Rs. against the mesne profits. If, on the other hand, Mohesh Lal be paid by the Mohunt, or by the sale of Nos. 1, 2, and 4 under the mortgage, Mungul Das would have no claim as against the Mohunt in respect of the Rs. 5,849.

Looking then at the whole evidence, their Lordships are of opinion that the Plaintiffs are entitled to recover Nos. 1, 2, and 4, and Nos. 7, 8, 9, 10, and 11, and that the Defendant is entitled to a decree in respect of No. 3. Their Lordships will therefore humbly advise Her Majesty that the judgment of the High Court be affirmed, except so far as it relates to No. 3, and reversed as to that, and that it be declared that in case the Defendant pay off the debt due to Mohesh Lal under the bond of the 12th May

1872, and obtain a release of Nos. 1, 2, and 4 from the charge created thereby, he will be entitled to take credit in account for the sum of Rs. 5,849 above mentioned. The Appellant having succeeded in his appeal only as regards a small portion, No. 3, the Government revenue of which is only 44 Rs. 7 annas, and the value of the estate 440 Rs., as against something like Rs. 19,000, their Lordships consider that there should be no costs of this appeal on either side.

