Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Sarat Chunder Dey and others v. *Gopal Chunder Laha and others, from the High Court of Judicature at Fort William in Bengal; delivered* 23*rd July* 1892.

Present:

LORD WATSON.
LORD MORRIS.
SIR RICHARD COUCH.
LORD SHAND.

[*Delivered by Lord Shand.*]

This appeal has been brought against a judgment of the High Court at Calcutta. The case originated in the Court of the Moonsif of Sealdah, against whose decision an appeal was taken to the District Judge of the 24 Pergunnahs. Accordingly the High Court was precluded by the provisions of Sections 584 and 585 of the Civil Procedure Code, 1882, from reviewing the judgment of the District Judge on the facts which he held to be established, and under the appeal had a question of law only for determination.

The Appellants, being desirous of having the scope of their present appeal enlarged, to the effect of allowing them to question the judgment of the District Judge in so far as it involved matters of fact, as well as of law, presented an application to be allowed to appeal gene-

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rally against that judgment, but their Lordships, on the 26th July 1890, refused this application. The appeal, therefore, now presents only a question of law for decision, that question being whether, on the facts as determined by the judgment of the District Judge, the Respondent Gopal Chunder is estopped from maintaining his present claim.

The case has assumed considerable importance because of the argument which has been maintained as to the principles regulating the law of estoppel, founded on the authority not only of the judgment of the High Court at Calcutta in this case, but also of other judgments in the High Courts at Madras and Allahabad, to which it will be proper that their Lordships should hereafter specially refer.

The facts which have given rise to the present controversy, as these are to be found in the judgment of the District Judge, and the deeds and documents to which he refers, may be shortly stated.

Gopal Chunder having in 1885 purchased from Ahmed Hossein and Rahimunnissa Bibi, a son and daughter respectively of Umed Ali Shah Ostagar, the shares to which they had succeeded on the death of their father of certain heritable property specified in the schedule to the original plaint, obtained a conveyance of these shares in his favour, dated the 28th July 1885. In December following he filed his plaint against the Appellants, who had been in possession of the property for about three years, claiming to have a declaratory decree that the sellers to him, Ahmed Hossein and Rahimunnissa Bibi, had held the right to the shares of the property purchased by him, and that he might, as purchaser from them, have a decree of partition of the lands, and be put into possession of these respective shares

accordingly. In defence the Appellants explained that their predecessors had purchased the property, including the shares of Ahmed Hossein and Rahimunnissa Bibi, with certain other properties, at an auction sale in May 1882, which took place under a decree in a mortgage suit obtained by one Moonshi Kalimuddin against Arju Bibi, the widow of Umed Ali Shah Ostagar, and mother of Ahmed and Rahimunnissa. They alleged, in their written statement, that Arju Bibi was the true owner of the property, having acquired right to it from her husband Umed in 1878; that Arju Bibi after her husband's death, which occurred on the 6th August 1879, on the 22nd April 1880 mortgaged the properties for a sum of Rs. 2,000 borrowed by her from Kalimuddin, who, in consequence of the failure in repayment of the money lent, obtained a decree on the 7th December 1881 declaring a mortgage lien on the property, and that, under the execution decree thereafter obtained, the property was sold, when it was purchased by the Appellants' predecessors in title.

According to the Appellants' statement, Arju Bibi became the absolute proprietor of the property in question by virtue of a conveyance (hiba-bil-ewaz) bearing to be granted for an onerous consideration, granted in her favour by her husband, dated the 4th January and registered on the 15th February 1878 (about 18 months before he died), and it was in virtue of this title that, about nine months after her husband's death, she granted the mortgage already mentioned in favour of Kalimuddin, on the narrative that she had borrowed Rs. 2,000 from him "to meet my "necessity." They alleged that Umed Ali, "in "lieu of the money due to his wife Arju Bibi "on account of her dower, made a *bonâ fide* gift "of the disputed properties, and other pro- "perties, in favour of Arju Bibi, and put her

" in possession of the same;" and they further alleged that, even if the hiba by Umed in favour of his wife Arju Bibi was not effectual to defeat the rights of succession of his children, Ahmed and Rahimunnissa, from whom the Plaintiff derived his title, yet they were estopped by the actings of their father during his lifetime, and separately by their own actings after his death, from maintaining the invalidity of the hiba, and from either themselves, or through any purchaser from them, challenging the mortgage by Arju Bibi in favour of Kalimuddin, which is the foundation of the Appellants' title.

In his plaint the Plaintiff alleged that the hiba by Umed in favour of his wife was a fraudulent and collusive deed intended to defeat the rights of his creditors; that there was no such dower due, as was stated in the deed to be the consideration for granting it; that no possession of the properties was ever given to Arju Bibi, but that the transaction was benami merely, and benami without even possession. And besides issues to try the question whether the hiba had been followed by possession and was a valid instrument, a further issue was sent for trial in these terms :—" Is the Plaintiff's claim barred by " the rule of estoppel, and was Defendant a *bonâ* " *fide* purchaser for value " ?

The defence founded on the hiba, apart from the question of estoppel, was finally disposed of by the judgment of the District Judge. The Moonsif, dealing with the issue on this part of the case and the evidence bearing on it, had come to the conclusion that the hiba was a " valid and " binding document," not indeed a deed which could be supported on the ground of valuable consideration, but " a deed of gift, followed by " seizin as required by Mahomedan law," and he accordingly dismissed the suit. But the District Judge reversed his judgment, and gave decree in

terms of the Plaintiff's claim. In doing so, for reasons fully stated, he concludes his judgment on this part of the case by saying: "I hold "that the deed of January 1878 is invalid. It "is invalid as a simple gift, because Arju Bibi "did not get possession till after her husband's "death; and it is invalid as a deed for con- "sideration, because there was no consideration "for it."

It follows that the only question for consideration now is that of estoppel. The Plaintiff's predecessors in title, Ahmed Ali and Rahimunnissa Bibi, by virtue of their rights of succession to their father, were entitled to dispose of their respective shares of the property in question unless they were estopped from so doing either by their father's acts or by their own conduct after his death.

The plea of estoppel was held by the judgment of the Moonsif to be well founded, mainly, if not entirely, on the ground of the actings of Umed Ali. He held that not only had Umed Ali put his wife into ostensible possession of the property, but that he had proclaimed to all the world that he had made a valid hiba, and that, after granting that deed, in his dealings with the property he was only the agent of his wife, who was the true owner. The District Judge reversed this decision, taking a different view of the facts on which the Moonsif's judgment rested, and his decision has been affirmed by the High Court.

In dealing with the question of estoppel now, it is obviously necessary to consider separately the alleged acts of Umed Ali, and the actings of his children, Ahmed and Rahimunnissa, with their respective legal consequences. It was very strongly urged upon their Lordships, chiefly on the authority of the case of *Luchmun Chunder and another* v. *Kalli Churn and others* (1873, 19 Weekly Reporter, p. 292), referred to in the

judgment of the High Court, that the acts of Umed Ali were sufficient to create an estoppel as against his children in a question with the purchaser from their mother, Arju Bibi, the widow, and benamidar, as she must be taken to have been after the judgment of the District Judge.

The section (115) of the Indian Evidence Act I. of 1872 which regulates the law on this subject is in these terms :—" When one person has, by " his declaration, act, or omission, intentionally " caused or permitted another person to believe " a thing to be true and to act upon such belief, " neither he nor his representative shall be " allowed, in any suit or proceeding between " himself and such person or his representative, " to deny the truth of that thing."

The mortgage which is the foundation of the Appellants' title was not granted by Arju Bibi, the benamidar, during her husband's life and in circumstances showing that he consented to her granting the deed, in which case estoppel might have been successfully pleaded against his heirs in answer to any challenge of the deed by them. It was granted as already stated, after the death of Umed, and consequently, after his children, Ahmed and Rahimunnissa, had become proprietors of certain shares of the property held in title by their mother as benamidar.

In the case of *Luchmun Chunder* a similar state of facts occurred, for there, as here, the mortgage was granted by the widow after her husband's death. But in that case the husband, Ubotar Singh, had never himself held the title to the property there in question in his own name. The title was derived from a third party and taken directly to his wife, and, according to the narrative of the conveyance, the price was paid from her stridhun fund. He was never in pos-

session of it. His wife took possession and retained it, and, as stated by the High Court in their judgment in the present case, by a long series of public acts and declarations, he did all he could to cause his wife to bear towards the public the character of owner. There were thus continuous declarations and acts by the husband calculated to cause any person dealing with the widow to believe that she was and had been the proprietor in her own right, and in possession of the property purchased.

In the present case the facts are entirely different. The District Judge has held that "in fact, Umed Ali did nothing beyond exe- "cute and register the deed of gift." "There is," he observes, "no evidence that he held "out Arju Bibi to the world as the owner "of the property. He never parted with the "possession." There was no mutation of names in the Government registers, and practically nothing different from an ordinary benami arrangement which, as the District Judge observes, is "too common among Mahomedans "to deceive anybody." It is clear that in this state of the facts there is no foundation for the plea of estoppel in so far as founded on the actings of Umed. The Appellants cannot point to any declaration, act, or omission on his part which they can successfully maintain could warrant them in believing, and acting on the belief, that Arju Bibi was the owner of the property which they purchased, and this has been expressly found by the District Judge.

Accordingly there remains only the question whether the Plaintiff is estopped from maintaining the invalidity of the hiba in consequence of the declarations or acts of his authors in title, Ahmed and Rahimunnissa, or either of them. The District Judge has held it to be proved that they had both reached

majority at the date of the mortgage, at least this is plainly implied in the language he uses. His expression is they "were practically, if not "technically, infants," and "presumably under "their mother's influence." Accordingly it must be taken that they were of age to consent to the mortgage being granted, or by their acts or representations to bar themselves from challenging it.

As regards Rahimunnissa, the learned Counsel for the Appellants did not profess to be able to refer to any representation or acting on her part which could bar her from challenging the validity of the hiba, or the title of any one taking a conveyance by Arju Bibi, or taking a title by virtue of the mortgage granted by her. There is no case of estoppel presented against her on account of personal representations, acts, or omissions; and so soon therefore as it is settled that her claim, or that of the Plaintiff, in so far as he derives title from her, is not barred by any representations or acts on the part of her father, it follows that to the extent of her interest the claim of the Plaintiff to the possession he demands must be allowed.

But in regard to Ahmed, and the Plaintiff's claim as a purchaser from him, a very different state of facts has been proved. The High Court in dealing with this question in their judgment say:—"The circumstance of "Ahmed Hossein having attested the deed of "mortgage to Kalimuddin is relied on as es- "topping him from questioning his mother's "power to execute the document;" adding: "we are unable to hold that the mere witnessing "by him of that document, . . . or his assent "to the execution of it, can create an estoppel "binding on him, unless it were apparent that "when he witnessed the deed and assented to it, "he did so with knowledge of the invalidity of

" the hiba to confer upon Arju, and the fact " that Arju had no power to create, a good title " as against him, of which knowledge on his " part there is no proof." The view of the law to be applied in the circumstances as thus stated will be immediately referred to; but their Lordships must, in the first instance, observe that the acting of Ahmed in reference to the granting of the mortgage by his mother went a great deal further than his being merely a witness to the execution of the deed; as to the effect of which, as a circumstance from which his assent to the deed might be inferred (had that been the state of the facts), their Lordships think it unnecessary here to express any opinion.

The facts, however, as appearing on the face of the mortgage itself (which is referred to in the judgment of the District Judge) are not that Ahmed was a witness to the execution of the deed, for the witnesses were other persons, but that he really represented his mother in the whole transaction. He acted with Moonshi Golam Hossein as am-mokhtar on her behalf under a power of attorney authorising him to do so; he signed the mortgage on her behalf and in her name; and he and Golam Hossein received the money advanced by Kalimuddin, as appears from the official certificate by the Sub-Registrar endorsed on the deed.

Their Lordships are very clearly of opinion that these actings on the part of Ahmed create an estoppel against him, or any one claiming in his right, from disputing the title of Arju Bibi to grant the mortgage to Kalimuddin. They amounted to a distinct declaration by him to the lender that the hiba in favour of Arju Bibi was a valid deed, or in any view, that if the document was open to legal objections, Ahmed as the person entitled to challenge the deed, waived his right to do so,

and consented for his interest to represent and to hold the hiba as valid, and consequently as giving a legal right to Arju Bibi as the proprietor to grant the mortgage. There was a distinct representation by Ahmed professing to act as his mother's attorney, that she was owner in possession, having a good title to create a valid mortgage affecting the lands. It is, in their Lordships' opinion, impossible to take any other view of the effect of Ahmed's conduct in the whole transaction, and particularly his signing the mortgage and taking payment of the money; and it is equally clear that the transaction was concluded on the footing of that representation, and that the creditor was thereby induced to lend the money on the security of the mortgage. It has been frequently said, in cases of this class, that the creditor is bound to make inquiry into the validity of such a title as Arju Bibi the borrower here possessed, and the obligation applies with great force in this case, in which the hiba was granted without consideration, and, as the least inquiry would have shown, without any possession having followed on it. But inquiry, or indeed any anxiety as to the title of Arju Bibi to grant the mortgage as proprietor in virtue of the hiba in her favour was made quite unnecessary by the representation and conduct of Ahmed, who was (so far as his share of the property was concerned) the sole person having a title or interest to challenge the validity of the hiba, and to object to the granting of the mortgage which he himself signed and delivered in exchange for the money paid to him.

In this state of the facts the terms of Section 115 of the Evidence Act directly apply to the case, for Ahmed, having by his acts and the declaration which his acts involved, intentionally caused the lender to believe that

Arju Bibi, as proprietor under the hiba, was entitled to grant the mortgage, neither he, nor his representative the Plaintiff, can be allowed to deny the truth of what was thereby represented, believed, and acted on.

From the terms of the judgment of the District Judge it rather appears that he might have sustained the plea of estoppel but for certain considerations which are thus stated in different parts of his judgment. He says, "There " is also nothing to show that Ahmed Hossein " was not under a *boná fide* mistake when he " supported the hiba. He knew nothing of its " execution, and was a minor when his father " died. Until disabused by the High Court " decision, he may have honestly believed that " the hiba was genuine. . . . . There " is nothing to show that Ahmed Hossein com- " mitted any fraud or contemplated committing " any."

The District Judge further indicates that even if the plea of estoppel might have been sustained in other circumstances, yet the purchasers would be open to the objection that they cannot avail themselves of the plea as being "*boná fide* " purchasers for value and without notice," because before the purchase was made under the mortgage sale certain judicial proceedings before the High Court (referred to in a passage in the judgment just quoted) had been taken by or on behalf of Pakjan, a minor son of Umed Ali, in which it was determined that the hiba in favour of Arju Bibi was invalid, of which proceedings the purchasers were said to have been cognizant. The High Court in the closing part of the judgment under appeal also say: " Under these cir- " cumstances we cannot hold that the Additional " District Judge, either in determining as he has " done, that no estoppel was created, or in " holding as he has done, that the Defendants

" do not occupy the position of *bonâ fide* pur-
" chasers without notice, was wrong; and this
" absolves us from considering the further ques-
" tion which we might perhaps have otherwise
" found it necessary to determine, viz., whether
" if Ahmed and Rahimunnissa were estopped
" from disputing the hiba, that estoppel would
" have been binding on the Plaintiff, in the
" absence of proof or knowledge on his part of
" the circumstances that gave rise to it."

With reference to the views indicated in these passages of the judgments now under review, their Lordships think it right to say that it would make no difference in the effect to be now given to the plea of estoppel against a purchaser under the mortgage sale, though it clearly appeared that Ahmed when he acted as he did in the mortgage transaction was under the belief that the hiba was a valid deed which he could not set aside; nor is it of any moment that he neither contemplated committing any fraud, nor, in fact, committed any fraud by his acts or representations. And their Lordships must further observe that, as the mortgage was effectual as a valid title to Kalimuddin, the lender, under which in default of payment of the money lent he was entitled to sell the property, it follows that any purchaser from him under a sale regularly carried out would acquire a valid title to the property, even though he were fully aware of all the circumstances which had attended the execution of the hiba, and that it had been originally invalid.

In regard to the first of these points, the section of the Evidence Act by which the question must be determined does not make it a condition of estoppel resulting that the person who by his declaration or act has induced the belief on which another has acted was either committing or seeking to commit a fraud, or that he was

acting with a full knowledge of the circumstances, and under no mistake or misapprehension. The Court is not warranted or entitled to add any such qualifying conditions to the language of the Act; but even if they had the power of thus virtually interpolating words in the Statute which are not to be found there, their Lordships are clearly of opinion that there is neither principle nor authority for any such legal doctrine as would warrant this. The learned Counsel who argued the present case on either side were agreed that the terms of the Indian Evidence Act did not enact as law in India anything different from the law of England on the subject of estoppel, and their Lordships entirely adopt that view. The law of this country gives no countenance to the doctrine that in order to create estoppel the person whose acts or declarations induced another to act in a particular way must have been under no mistake himself, or must have acted with an intention to mislead or deceive. What the law and the Indian Statute mainly regard is the position of the person who was induced to act; and the principle on which the law and the Statute rest is, that it would be most inequitable and unjust to him that if another by a representation made, or by conduct amounting to a representation, has induced him to act as he would not otherwise have done, the person who made the representation should be allowed to deny or repudiate the effect of his former statement, to the loss and injury of the person who acted on it. If the person who made the statement did so without full knowledge, or under error, *sibi imputet*. It may in the result be unfortunate for him, but it would be unjust, even though he acted under error, to throw the consequences on the person who believed his statement and acted on it as it was intended he should do. The general principle is thus

stated by the Lord Chancellor (Campbell), with the full concurrence of Lord Kingsdown, in the case of *Cairncross* v. *Lorimer*, 1860, III. Macqueen's House of Lords Cases, p. 829:—
"The doctrine will apply, which is to be found,
"I believe, in the laws of all civilized nations,
"that if a man either by words or by conduct has
"intimated that he consents to an act which has
"been done, and that he will offer no opposition
"to it, although it could not have been lawfully
"done without his consent, and he thereby induces
"others to do that from which they otherwise
"might have abstained, he cannot question the
"legality of the act he had so sanctioned, to the
"prejudice of those who have so given faith to
"his words or to the fair inference to be drawn
"from his conduct. . . . I am of opinion that,
"generally speaking, if a party having an in-
"terest to prevent an act being done has full
"notice of its having been done, and acquiesces
"in it, so as to induce a reasonable belief that he
"consents to it, and the position of others is
"altered by their giving credit to his sincerity,
"he has no more right to challenge the act to
"their prejudice than he would have had if it
"had been done by his previous license." These words were used with reference mainly to acts indicating only subsequent consent to an appointment which had been made, and which might have been objected to when originally made; but they apply *a fortiori* in a case like the present, where the person estopped was a party to the transaction itself, which he, or others taking title from him, seek to challenge after a considerable interval of time.

There is no ground for the suggestion that the person making the representation which induces another to act must be influenced by a fraudulent intention, to be found either in the case just referred to, or in the leading authorities of

Pickard v. *Sears*, 6 A. and E., 469; *Freeman* v. *Cooke*, 2 Ex., 654; and *Cornish* v. *Abington*, 4 H. and N., 549. In the more recent case of *Carr* v. *London and North-Western Railway Company* (1875), L. R., 10 C. P., 316, in the Appellate Court of the Common Pleas, the Master of the Rolls (Lord Esher) pointed out that no doubt in certain cases where estoppel is successfully pleaded against a party seeking to act at variance with his previous conduct or declarations on the faith of which another has acted, the original statement may have been made fraudulently, but, as his Lordship explained, a fraudulent intention is by no means necessary to create an estoppel, and accordingly he mentions other cases or classes of cases in which the determining element is not the motive with which the representation has been made, nor the state of knowledge of the party making it, but the effect of the representation as having caused another to act on the faith of it. This case was approved of in the much later case of *Seton Laing & Co.* v. *Lafone* (1887), L. R., 19 Q. B. D., 68, by a unanimous judgment of Lord Esher and Lords Justices Fry and Lopez. In that case Lord Esher said: "An estoppel "does not in itself give a cause of action; it "prevents a person from denying a certain state "of facts. One ground of estoppel is where "a man makes a fraudulent misrepresentation "and another man acts upon it to his detriment. "Another may be where a man makes a false "statement negligently, though without fraud, "and another person acts upon it. And there "may be circumstances under which, where a "misrepresentation is made without fraud and "without negligence, there may be an estoppel." To this statement it appears to their Lordships it may be added that there may be statements made, and which have induced another party to

do that from which otherwise he would have abstained, which cannot properly be characterized as "misrepresentations," as, for example, what occurred in the present case, in which the inference to be drawn from the conduct of Ahmed was either that the hiba in favour of Arju Bibi was valid in itself, or at all events that he, as the party having an interest to challenge it, had elected to consent to its being treated as valid.

Reference has already been made to certain Indian cases which were cited and founded on in the course of the argument. These were the cases of *Ganga Sahai* v. *Hira Singh* (1880), in the High Court of Judicature at Allahabad, I. L. R., 2 All., 809, and *Vishnu* v. *Krishnan* (1883), in the High Court at Madras, I. L. R., 7 Mad., 3. In the former of these cases it was laid down by a majority of the judges that if the element of fraud be wanting there is no estoppel. It was expressly said: "There must "be deception, and change of conduct in con- "sequence." The latter case was one in which an adoption having taken place, the alleged adopted son claimed to set aside a deed of gift of certain property by his adoptive father, granted by him late in life in favour of a stranger. The deed was liable to be set aside as *ultra vires* if the adoption was valid; but it was maintained separately that in any view the Defendant was estopped from maintaining the invalidity of the adoption by a series of acts on the part of the adopting father, which had induced the belief on the part of the Plaintiff that the adoption was valid, and in consequence of which the adopted son had abstained from claiming a share in the inheritance of his natural family. In the end the adoption, which was that of a sister's son, was held, after a proof of the customary law of Malabar, to have been

valid; but before allowing the proof the Court decided that the case of estoppel failed.

It would be most difficult to reconcile this decision with that of the case of *Luchmun Chunder and another* v. *Kalli Churn and another*, already referred to, and the views of this Committee as there expressed; and their Lordships would also have great difficulty in holding, as the High Court did, that a series of acts by which an adoption is professedly made and subsequently recognized, constitute a representation in law only and not of fact. But apart from this, the Court seems to have taken the view that in order to create estoppel, the representations founded on must have been made with an intention to deceive; and an opinion was indicated that the law of estoppel under the Indian Evidence Act in some respects differed from the law of England. It was there said (I. L. R., 7 Mad. 8): "The term 'intentionally' was, no doubt, adopted "advisedly. By the substitution of it for the "term 'wilfully' in the rule stated in *Pickard* "v. *Sears*, and explained in *Freeman* v. *Cooke* "and *Cornish* v. *Abington*, it was possibly the "design to exclude cases from the rule in India "to which it might be applied under the terms "in which it has been stated by the English "Courts." Their Lordships are unable to agree in this view. On the contrary, as the rule had been modified in England by there substituting the word intentionally in the rule established for the word wilfully which had been previously used, it seems to their Lordships that the term "intentionally" was used in the Evidence Act (1872) for the purpose of declaring the law in India to be precisely that of the law of England. Baron Parke, in the case of *Freeman* v. *Cooke* (2 Ex. 654) in effect stated that the term "wilfully" used in the previous case of Pickard was really equivalent to "intentionally,"

in these words : " By the term '*wilfully*' . . . . " we must understand, if not that the party re- " presents that to be true which he knows to be " untrue, at least that he *means* his representation " to be acted upon, and that it is acted upon " accordingly; and if, whatever a man's real " intention may be, he so conducts himself " that a reasonable man would take the repre- " sentation to be true, and believe that it was " meant that he should act upon it, and did act " upon it as true, the party making the repre- " sentation would be equally precluded from " contesting its truth." A person who, by his declaration, act, or omission, had caused another to believe a thing to be true and to act upon that belief, must be held to have done so " in- " tentionally " within the meaning of the statute, if a reasonable man would take the representation to be true, and believe it was meant that he should act upon it. And to this view effect was given in the case of *Cornish* v. *Abington* and the later cases.

It is unnecessary to quote the passages (pp. 8 and 9 of the Report) in the case of *Vishnu* v. *Krishnan*, indicating that in the opinion of the High Court it was necessary to prove an intention to deceive in order to make a case of estoppel. Their Lordships have already said enough to make it clear that they differ from the views to that effect expressed in that case, and in the case of *Ganga Sahai* v. *Hira Singh*.

As already stated, the Plaintiff further maintained that the Appellants could not avail themselves of the plea of estoppel against him because before their predecessors made the purchase under the mortgage sale they were aware that it had been held by the High Court in another suit that the hiba which was the foundation of the title under which they purchased was invalid; but as already explained,

their Lordships have no difficulty in repelling this contention. It may be true, and in any case it may be assumed to be true, that the Appellants' predecessors in title knew of the decision referred to. But it is equally true that whatever might have been held as to the invalidity of the hiba in a proceeding at the instance of Pakjan, Ahmed, or any one claiming in his right, was precluded by Ahmed's acts and representations from maintaining the invalidity of the hiba, or the mortgage granted by his mother so far as regards his share of the property. In any question with Ahmed or his representatives, Alimuddin had obtained a valid mortgage, and as he had himself a valid title so he could give a good title to a purchaser under a mortgage sale, whatever might be the state of knowledge of the person purchasing. Their Lordships therefore are clearly of opinion that the Appellants are not precluded from maintaining, as they do successfully, that the plea of estoppel is good against Ahmed, and consequently good against the Plaintiff, in so far as regards the share of the property which Ahmed might have claimed as succession.

On the whole case their Lordships, on the grounds thus fully stated, will humbly advise Her Majesty to discharge the decrees of all the Courts below, and make a decree in favour of the Plaintiff for Rahimunnissa's share only, and that he get possession of that share by distinct partition, with costs in proportion in all Courts. The Plaintiff, however, must pay the costs of this appeal, in which the Appellants have obtained a substantial success.