

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Lalta Pershad and others v. Sheikh Aziz-uddin Ahmad and another, from the High Court of Judicature for the North-Western Provinces, Allahabad; delivered 5th August 1895.

Present:

LORD WATSON.

LORD MORRIS.

SIR RICHARD COUCH.

[*Delivered by Sir Richard Couch.*]

The suit which is the subject of this Appeal was brought to set aside a deed of sale executed by the Respondents on the 11th of August 1887 and registered on the 17th of August. The deed was a unilateral deed, by which the Respondents sold to Laldas Mangni Ram, Baij Nath, and Brij Lal, Sahun, residents of Pilibhit, who are now dead, (the Appellants being their representatives,) lands in mauzas Bairamnagar, Kabir, Salehpur, Mujahidpur Kaisapur, Kirpya and other mauzas, the consideration being the amount due upon a mortgage deed dated the 7th of March 1881, and the amount due upon a mortgage deed dated the 8th of August 1882, which were to be cancelled, and also a payment which was to be made by the purchasers in satisfaction of a decree obtained by one Mohan Lal against the Respondents. The suit was brought by Mangni Ram, Baij Nath, and Brij Lal. A decree had been obtained by them on a bond dated the 22nd of January 1884 in the Court of the Subordinate

87320. 125.—8/95.

Judge of Bareilly for Rs. 39,243. 15. On the 11th of July 1887 a proclamation of sale in execution of the decree was issued, stating that the sale was to be held on the 20th of August 1887, and that some of the properties had been advertised to be sold on the same day under a decree obtained by Mohan Lal against Hafiz-ud-din the 2nd Respondent, upon which Rs. 2,763. 0. 6 were due; and that there were two other decrees, one in favour of Damodar Das for Rs. 300. 6, and another in favour of Ravi Lal for Rs. 1,355. 9 to be satisfied. On the 16th of April 1887, on the application of the Respondents, a certificate was given under Section 305 of the Civil Procedure Code, authorising them to transfer the attached properties entered in it "by farm or private sale," provided that the money payable by reason of mortgage farm or sale should be paid into Court. In the detail of properties at the foot of the certificate there are, with others, the mauzas Tanda, Shergarh, and Dungarpur. Under this authority negotiations were about the middle of July entered into between the Plaintiffs and the Defendants, (the Respondents), for a sale. The case stated in the plaint is that the Defendants at Pilibhit contracted to sell for one lakh two thousand and fifty-three rupees to the Plaintiffs the entire 20 biswas of mauzas Shergarh, Dungarpur, and Tanda, a 5 biswa 4 biswansi and 3 kachwansi share in mauza Bairamnagar, an 11 biswa 4 biswansi and odd share in mauza Kabir, and a 25 biswa 2 biswansi and 16 kachwansi share out of 40 biswas of mauza Salehpur Muahidapur, the sale consideration being that the mortgage bonds of the 7th of March 1881 and the 8th of August 1882 should be returned at the time of registration, that Rs. 2,463 should be paid to Mohan Lal, that Rs. 14,600 should be set off against the judgment debt upon the bond of the 22nd of

January 1884, and that Rs. 1,085 in cash should be paid for the purchase of stamp and the expenses of registration &c., which was paid; that before the 11th of August the Plaintiffs sent to the Defendants a draft of the sale deed; that the Defendants approved of it and sent word to Baij Nath that he should send both the bonds to Baheri in order that they might be taken back at the time of registration and the deed be registered and that notes in respect of possession of the sold property would be written; that Baij Nath sent the bonds to Baheri by Munna Lal and Mul Chand, servants, and directed them to return the bonds after the deed had been registered and the notes in respect of possession of all the sold properties had been written and given by the Defendants; that the deed of the 11th of August omitted properties of large value comprised in the contract and substituted for them properties of smaller value; and that the consideration entered in the deed was much in excess of the real value of the property in it. The omitted properties were Shergarh, Durgarpur, and Tanda. In the written statement of the Defendants their case is that the greater part of the debts to the Plaintiffs had been contracted during the minority of Hafiz-ud-din; that some had been contracted by Aziz-ud-din alone; that the Plaintiffs thought that the realization of most of the debts was in danger and therefore sued only on the last bond which was apparently out of danger; that the Plaintiffs promised that if all the bonds were admitted they would purchase the property at the rate of one hundred rupees for every four annas and that they would show this indulgence because they received more than double the interest; that after making the calculation at the aforesaid rate the deed was after preparation of the draft under the superintendence of the Plaintiffs, and perusal

and comparison with the draft, and its attestation by witnesses, completed at the Plaintiffs' firm, and that the Defendants took it to Baheri.

It is well at once to notice that it clearly appeared at the trial that the statement of Hafiz-ud-din's minority is false, from a petition for mutation of names dated the 2nd of December 1876, presented by the Defendants to the Assistant-Collector on the death of their father, in which Hafiz-ud-din is stated as "aged 17 years"; and from his deposition in the Court of the Subordinate Judge made on the 16th September 1880 in which he states his age as about 19 years. A purchase at the rate of 100 rupees for every four annas certainly required explanation, as the Plaintiffs would only obtain from the property 3 per cent. on the purchase money.

The pleaders of the parties appear on the proceedings to have made statements. That of the Plaintiffs' pleader is that Mohun Lal, Behari Lal, Mul Chand, Chadamma Lal, and Ali Bakhsh were servants of the Plaintiffs; that the deed of the 11th of August bore their signatures as witnesses; that he (the pleader) did not know when, how, and where they signed; that they did not sign it with the Plaintiffs' permission (meaning Baij Nath the active person in the matter), nor did they sign it in his presence. The Defendants' pleader, who seems to have first made a statement, had said that the deed was executed at the Defendant's house, and that no one of the Plaintiffs was present at that meeting; but he went on to say that it was fair copied, and that the deed was compared with the draft in the presence of Baij Nath, and was signed by witnesses in his presence. Possibly when he said the deed was executed at the Defendant's house he meant that the draft was made there; but no draft corresponding with the deed was produced.

Therefore the question to be decided was, did the contract of sale include the mauzas Shergarh, Dangarpur, and Tanda? The first witness for the Plaintiffs was Budh Sein one of their servants. His evidence was that he was present at a conversation between Aziz-ud-din and Mangni Ram and Baij Nath, and that Aziz-ud-din said:—"What advantage will you get by auctioning the property; take (purchase) whatever property you like"; that Mangni Ram said:—"I wish to purchase the five or seven villages in pargana Baheri belonging to you, namely—Shergarh, Manda, the whole of Dungarpur, Bairamnagar, Kayar, Salehpur, Mujahidpur;" that Aziz-ud-din said:—"At what rate will you purchase these villages?" that Mangni said:—"You mention the rate"; that "eventually it was settled that the villages would be sold at the rate of 7 annas. The price came to something over a lakh of rupees"; that a draft was drawn up by Mul Chand, and that Jagan Nath dictated it; that there appeared to be a mistake in it, and Kazi Zaki-ud-din a pleader was sent for; that he came and corrected the draft; that afterwards Mul Chand made a fair copy of the draft and read it; that Aziz-ud-din asked for a copy and the witness made one and gave it to him; that afterwards Aziz Ahmad the Defendants' karinda told him the sale deed was executed and asked him to come and sign it; that he went to the Defendants' place; that Hafiz-ud-din gave the sale deed to him, and he read it and affixed his signature as a witness; that it was exactly like the draft a copy of which he had given; that "all that property was entered in it." He said that the profits on which the price was fixed amounted to something over Rs. 5,000 after deducting Rs. 250 on account of expenses; that when he witnessed the deed he

“ understood from memory that the purport and “ villages were the same.” On looking at the draft (afterwards called No. 4) he said it was that which was written by Mul Chand and of which he made a copy. In answer to the Court he said, on looking at the sale deed :—“ This is “ not the sale deed which I witnessed.” His name is not among the witnesses.

The next witness was Jagan Nath, a banker, and a brother of the Plaintiffs. He said that Aziz-ud-din had told him that his property was advertised to be sold on the 20th of August and he wanted the negotiations regarding the sale of the property to be settled through his exertions. He said :—“ Have a talk with Lala “ Mangni Ram.” He had a talk with Mangni Ram, who said if Sheik Aziz-ud-din wished he would take no other property but that in pergana Baheri. He told Aziz-ud-din to that effect. The next day Aziz-ud-din came to the house of Mangni Ram and said :—“ Settle “ about the price of Baheri village.” He stated the names of villages and extent of shares ; Budh Sein took them down. After this there was a talk as to the rate at which a sale was to be made. Aziz-ud-din said he would sell the property at 6 annas per cent. Mangni Ram said he would purchase at 9 annas per cent. There was some haggling. After this both the persons agreed to abide by what the witness and Ghuran would settle. He and Ghuran said it was proper that the sale be made on value calculated at 7 annas. Both the men agreed to this. The witness then deposed to the amount of annual profit, the calculation of the price at the rate of 7 annas, the preparation of the draft and the giving of a copy to Aziz-ud-din, agreeing in this with Budh Sein. As to another fact which became material in the Defendants’ case he said that Baij Nath in

consequence of Mangni Ram becoming seriously ill left Bareilly on the 10th of August. He fixed this date as being two days before a festival called Janamashtmi. Two witnesses were next called who gave immaterial evidence, and then Durga Parshad deposed to a conversation with Hafiz-ud-din. Their Lordships think his evidence is not of any value, but they do not agree with the learned Chief Justice, who says of it:—
 “That is a most improbable story. If the
 “Defendants’ case is true Hafiz-ud-din could
 “not have made any such statement as to
 “Shergarh.” Upon the question of probability they think it is not right to assume the truth of the Defendants’ case as the Chief Justice seems to do. This witness was followed by Zaki-ud-din, Daulat Ram, Ajudhia Parshad, and Jalab-ud-din, who all gave similar evidence of the making of the draft No. 4. Then came Ali Ahmad, alias Ghuran, who deposed to having settled the rate with Jagan Nath at 7 annas per cent. His name is on the sale-deed as a witness, and he said that, being at Bareilly, Afiz-ud-din sent for him and took out the deed and said:—“The sale-deed is ready you should witness it”; that he put down his attestation; that when he did so he had not caused the deed to be read out nor did he read it; that on the day he witnessed it Baij Nath was in Pilibhit. The next witness, Narain Das, deposed that on the 11th of August Baij Nath was at the house of Mangni Ram who was very ill. He fixed the date as being the day before the festival. And Budh Sein, another witness of that name, and Khan Bahadur Khan gave similar evidence of Baij Nath being at Pilibhit on that day.

The Defendants called as their witnesses Baij Nath and Mul Chand. As their evidence was in favour of the Plaintiffs it is proper to notice it here. Baij Nath said he saw no sale-deed

written out and had no personal knowledge of its execution. In answer to the Defendants' pleader he said that a note (Exhibit A) bore his name but was not in his handwriting. The note is in these words :—" Sir,—The fair copy of the " document has been compared with the draft. " It is correct. Dated 11th August 1887. (Sd) " Baij Nath."

Mul Chand in answer to the Defendants' pleader deposed that on the 11th of August Aziz-ud-din at his house in Bareilly told him that the sale deed had been written out and that he was to take the documents with him and go to Baheri (the place of registration). He asked Aziz-ud-din to give him the sale-deed that he might attest it, and he replied that he would take the documents to Baheri for registration and that the witness' signature would be taken down there. He then told Aziz-ud-din that the Lala had sent him to have the sale-deed executed and to witness the same, and asked him to give him the document to witness it. He did not see the sale-deed even at Baheri and could not attest it. At Bareilly he gave the documents (meaning the mortgage bonds) to Munna Lal who went with him to Baheri. He said Exhibit A was not in his handwriting, and seeing the sale-deed said :—" The attestation as a witness on this is not with " my own pen. They have copied the style of " my handwriting." In answer to the Plaintiffs' pleader he said that the draft No. 4 was in his handwriting; that it was prepared in Pilibhit in the presence of Aziz-ud-din, and that he took a copy of it with him; that on the 21st he was at Baheri and then came to know that the villages contracted for had not been entered in the document and that other villages had been entered therein, and that he sent a telegram to the Lala Sahib (Mangui Ram). On re-examination he said that hearing persons were talking

how Aziz-ud-din had played a trick with the Pilibhitwalas he went to the registration mohurrir; that he learnt from him that Shergarh and other villages which were contracted for had not been entered in the document; that he did not see the sale-deed on the 21st because it was a holiday; he saw it on the 22nd.

Their Lordships think that the oral evidence for the Plaintiffs is supported by a petition presented on the 20th of August by Sayia Mal in the suit of Mohan Lal against Hafiz-ud-din, praying that he might deposit Rs. 2463. 0. 6. and that the villages be released from attachment. The villages referred to are stated in the title of the petition, where the petitioner is described as Karinda of Sahu Mangni Ram, Baij Nath, and Brij Lal, vendees of mauzas Shergarh, Tanda &c. (the villages in the draft No. 4). On the same day Mohan Lal presented a petition, in which he stated that he had received in Court the entire demand due by his debtor from Sayia Mal, describing him in the same manner.

Munna Lal was also examined as a witness for the Defendants. He deposed that he, Mul Chand, and Aziz-ud-din went together to Baheri; he was instructed to deliver the documents after registration and obtain a note acknowledging their return; he did so; the documents were returned at the dak bungalow; he did not witness the sale deed; he did not even see it; his name appears as that of a witness but it is not in his handwriting. In answer to the Plaintiffs' pleader he gave evidence that he asked Aziz-ud-din to file a petition for mutation of names and execute notes for possession and that he was put off with an excuse which proved to be untrue and did not get any notes for possession. These notes would have stated

the property transferred and would have led to an immediate discovery of the contents of the deed.

The case of the Plaintiffs was met by the Defendants with the following evidence :—

Imamulla deposed that Aziz Ahmad the karinda of the Defendants asked him to witness the sale deed; that he did so in the presence of Ghuran and Mul Chand; that he read the deed in a loud voice whilst Ghuran and Mul Chand were sitting there. It is to be observed that they do not appear to have been asked about this reading. Next came Vizarat Hussain. He said the deed bore his signature as a witness. Munna Lal, Dargahi Mal, patwari, and Sher Ali were present when he affixed his signature. Munna Lal attested it first. He wrote his signature with his own pen. To the Court he said that Munna Lal read and he heard about which villages the sale deed was; he heard what was read by Munna Lal; he did not recollect the name of any village, they were in three pergunas. The learned Chief Justice says "If the plaintiffs' case is true the villages agreed to be sold were in one pargana and not in three. It is impossible to believe that Munna Lal who was sent by the plaintiffs to Baheri to see that the sale deed was registered did not know and had not been informed as to what the sale deed was and what villages it should purport to pass. I have come to the conclusion that Munna Lal's evidence is false." Now the sale deed (Rec. p. 143) is a long deed, beginning with a recital of the two mortgage bonds, and containing a description of the properties, and their Lordships much doubt whether the witness who could not recollect the name of any village could recollect

that they were in more than one pargana. Further than this, looking at the length of the deed, they entertain the gravest doubt whether when it was attested it was read as this and other witnesses say it was. Ghuran said it was not read out, nor did he read it when he attested it, and they think that is more probable. The evidence of Ashgar Ali, the next witness, as to a conversation between Aziz-ud-din and Hafiz-ud-din ought not to have been allowed to be given. Sudr-ud-din is the next witness. He is a karinda of Aziz-ud-din and had been when examined in his service for 10 or 12 years. He said the deed was transcribed by him; Mul Chand gave him the draft; he compared the deed with Mul Chand; Mul Chand made over the deed to Lala Baij Nath. Baij Nath got Mul Chand to read out the draft and he also compared it with the original deed. This was on the 11th of August 1887. At that very time, after comparing the deed, Baij Nath had a "rukka" written by Mul Chand. In answer to the Plaintiffs' pleader he said Mul Chand signed Baij Nath's name on the rukka; he did not know why Baij Nath did not sign it. There is the evidence, which their Lordships think is entitled to credit, that Baij Nath was not at Bareilly on the 11th of August. Mul Chand said the rukka (Exhibit A) was not in his handwriting.

Their Lordships will not attempt to decide which of the two witnesses spoke the truth about the handwriting. As a statement signed by Baij Nath they think that the document is false, and they do not believe the evidence of this witness. The next, and the principal, witness for the Defendants is Aziz Ahmad, a karinda of Aziz-ud-din. He deposed that Aziz-ud-din proposed to sell certain villages which did not include

Shergarh, Dangarpur, or Tanda, and that Mangni Ram told him to send the papers to him and he would make inquiries from the tehsil and give a reply; that the papers were sent, and afterwards the witnesses, Aziz-ud-din and Hafiz Ghuran, went to Mangni Ram; that an account of the deeds was made up, and in regard to the villages that had been noted down the Lala said:—"Fix the price of that property at 4 annas (per cent.) on the profits (4 annas per cent. profits on the purchase money). I do not remember the exact price but it amounted to something less than a lakh of rupees." The Subordinate Judge in his judgment says that 4 annas per cent. on the purchase money is much below the rate prevailing in the district in which the property lies or in the neighbouring districts. And indeed this seems to be admitted in the plaint by giving the minority as a reason for it. The witness then spoke of the execution of the sale deed; that it was written by Sadr-ud-din when Mul Chand and Ghuran were present; that they and Ali Ahmad took it to the kothi to Lala Baij Nath who took it in his hand and said:—"You read out the draft, we will compare the sale deed"; that when the sale deed was compared a rukka was written to Sheikh Aziz-ud-din to the effect that the sale deed had been compared with the clean copy of the draft; that Mul Chand wrote out the rukka; that Baij Nath requested Mul Chand to write it; that Baij Nath gave the rukka to the witness and said:—"You can come over in the afternoon and bring Sheikh Aziz-ud-din with you, the witnesses will sign in his presence"; that in the afternoon, Aziz-ud-din and Hafiz-ud-din having signed the deed, it was signed by the witnesses in the kothi of Baij Nath in his presence; Mul Chand wrote the names of Mohan Lal, Behari Lal, Ali Ahmad, and

Chadamma Lal, as witnesses with his pen and they affixed their signatures below in Hindi in their own handwriting. The Chief Justice remarks that neither Mohan Lal, Behari Lal, or Chadamma Lal were called as witnesses, apparently treating that circumstance as adverse to the Plaintiffs. Their Lordships do not see that the Plaintiffs ought to have called them. It was rather the duty of the Defendants to call them to state what was done when their signatures were affixed to the deed. And they cannot agree with the Chief Justice that it is not probable that the witnesses did not read the deed before signing it. In their Lordships' opinion the evidence of Aziz Ahmad is utterly unworthy of credit.

Aziz-ud-din was not examined. He was a most important, indeed, a necessary witness for the Defendants. No evidence was given to account for his absence but it is said by the Chief Justice :—“ It is possible that the Plaintiffs “ were deceived by Aziz-ud-din as to the income “ or value of or as to incumbrances on the “ property which they agreed to purchase for “ Rs. 102,053; if that were the case it might “ account for Aziz-ud-din not appearing in the “ witness-box.” It appears to their Lordships that this is not a sufficient reason for his not being examined. They regard his absence as most suspicious and cannot treat it so lightly.

Their Lordships are unable, after full consideration, to agree in the reasons which the High Court have given for reversing the decree of the Subordinate Judge. In their opinion it was satisfactorily proved that the sale deed was not in accordance with the contract between the parties and was rightly set aside. And in conclusion they feel called upon to say they regret that the High Court should have passed

upon the Subordinate Judge a censure which appears to them to be undeserved. His judgment is in their Lordships' opinion a proper one. They will therefore humbly advise Her Majesty to affirm his decree, to reverse the decree of the High Court, and to order the appeal to it to be dismissed with costs. The Respondents will pay the costs of this appeal.
