

*Judgment of the Lords of the Judicial Committee  
of the Privy Council on the Appeal of Nawab  
Mirza Ali Khan Bahadur v. Indar Parshad  
and another, from the Court of the Judicial  
Commissioner of Oudh; delivered 8th May  
1896.*

Present :

LORD HOBHOUSE.

LORD MACNAGHTEN.

LORD MORRIS.

LORD JAMES OF HEREFORD.

SIR RICHARD COUCH.

[*Delivered by Lord Morris.*]

IN this case the Plaintiff, one Kanhaiya Lal (the father of the Respondents), who appears to have been a banker or money-lender, brought an action against the Appellant to recover the amount due to him, as he alleges, under a mortgage deed of the 6th February 1883, which was to be payable three years from the date of execution. The consideration for the mortgage was a sum of 46,000 Rs. advanced to the Defendant. That sum included the amount due upon two bonds and a mortgage, and a further advance made by the Plaintiff to the Defendant. There is a provision, apparently for the protection of the lender, the Plaintiff, that he should be continued receiver of the rents, somewhat as in an English mortgage deed the mortgagee sometimes reserves the right to appoint the agent, so that he may have the whip-hand. By way of showing that the transaction was a *bonâ fide* one, and intended to be acted upon by the Plaintiff, that deed is registered; and the borrower makes

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a declaration that he has received the amount. It is valueless if it can be gone behind in every case by an assertion that that which was stated at the time before the Registrar was untrue. The onus in this case appears clearly to lie on the Defendant. It is not easy to understand how the question came to be discussed. In this country he would probably have to institute a suit to set aside the deed as fraudulent before he could be listened to on a plea impeaching it. But, on the assumption that he must prove his case, what proof has he given that it is a fraudulent fictitious deed, given for no consideration? There is nothing except his own statement, which is contrary to the statement he made before the Registrar. The motive assigned is a fraudulent one, namely, that being involved in litigation, not with his general creditors, as far as can be seen, but merely with his wife and step-mother, and other relations, and in order to lead them to the conclusion that he was an embarrassed man, he executed these deeds for the purpose apparently of diminishing his income by showing that he was very largely indebted to the Plaintiff. That is not a very meritorious way in which to initiate a case which seeks to set aside a deed as having been itself executed fraudulently. The Appellant has really given no evidence that would have called for any answer from the Plaintiff.

The Plaintiff's case is very simple. He says that all these three transactions which were summed up in this mortgage bond of the 6th of February 1883 were for loans, and he gave evidence that he had sold what in this country would be called securities for the purpose of obtaining the money, in order to hand it over to the Defendant. There was some cross-examination as to the character of the books produced, but he did produce a day book in which there were entries of the sales of property belonging to the

Plaintiff which realised the very amounts which the Plaintiff alleged he gave to the Defendant.

Upon that state of facts the District Judge arrives at the conclusion that the defence would be inconclusive, as he terms it, but for a new element which is introduced into the case, by the allegation that the Plaintiff had not debited himself in his return to the Government for income tax in respect of the interest on these bonds, and that the bond in question was thus shown to be fictitious. The Judicial Commissioner of Oudh gave it as his experience that it is a very common thing in India, it is not certain that it is not a very common thing in other places as well as India, for persons not to make a full return of their income, running the chance of being surcharged if they are found out. It appears in this case that the Judicial Commissioner at once doubled the return that the Plaintiff had made, on the assumption, probably, as a general rule, perhaps a safe one, that it is only a half return that persons make. That, of course, would be a very wrong thing on the part of the Plaintiff, but it does not appear to their Lordships to have any weight in changing the onus which lay upon the Defendant of showing that no consideration passed for this mortgage. Their Lordships adopt the judgment of the Judicial Commissioner and will therefore humbly advise Her Majesty that this appeal should be dismissed.

The Appellant must pay the costs of the appeal.

