

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Pandit Ram Narain v. Maulvi Muhammad Hadi and others, from the Court of the Judicial Commissioner of Oudh; delivered 26th November 1898.

Present :

LORD WATSON.

LORD HOBHOUSE.

LORD DAVEY.

SIR RICHARD COUCH.

[*Delivered by Sir Richard Couch.*]

The suit which is the subject of this appeal was brought by Pandit Raj Narain against the Respondents for possession of a village called Habibpur in Pargana Malihabad, District Lucknow. He having died after the admission of the appeal is now represented in it by his heir and successor the present Appellant. The plaintiff stated that Raj Narain was the absolute owner of the village and had purchased it under a sale deed dated 27th July 1887 for Rs. 2,225 ism-farzi (fictitiously) in the name of his agent and steward the first Defendant. This Defendant (first Respondent) in his written statement denied that the deed of sale was executed fictitiously in his name. The other Defendants except the 7th and 8th claimed under a deed of gift by him and the latter two under a mortgage alleged in the plaintiff to be collusive, which was denied. In the view which their Lordships take of the principal

question it is not necessary to go into this matter and it will be convenient hereafter to call the first Defendant the Defendant. The District Judge made a decree in the Plaintiff's favour which was reversed by the Additional Judicial Commissioner on appeal.

It was proved that the consideration money for the sale was paid by the Narain. Two of the three witnesses who attested the execution by the seller were examined. One deposed that Raj Narain said he should get the document executed in another man's name, the other said that for five or six days there was discussion, Raj Narain said he was having the deed executed farzi in the name of an agent, he did not name him. Also Raj Narain was called by the Defendant as his first witness, the Plaintiff having previously called the first Defendant as his first witness, a proceeding of which there appears to be no explanation. Raj Narain said "I forget if Defendant No. 1 was here when I purchased Habibpur. My papers show that he was. The purchase was *ism-farzi*. The reason is clear, it was because of the quarrels of the maintenance holders. I have purchased other Khalispur villages at auctions in my own name. There are the same maintenance holders in them." On this statement there was apparently no reason for this village being bought *ism-farzi*. It is difficult to learn from the judgment of the District Judge what is the ground of his decision in the Plaintiff's favour. He says "The true criterion is to ascertain from whose funds the purchase money proceeded. In the present case it is allowed that the funds for the purchase of Habibpur were supplied by the Plaintiff." In many,—it may be said in most,—cases of alleged benami this is a very important fact. But it is not the only criterion. Here it is consistent with the Defendant's case,

which is that the Plaintiff purchased the village for him and intended it to be a gift in return for his services. In such a case a much more important fact is the actual possession or receipt of the rents of the property. The Plaintiff himself said that the Defendant was "in possession of the collections" and had not accounted for them for $9\frac{1}{2}$ years. His statement that he said to the Defendant five or seven times "give me the accounts of Habibpur" and the Defendant said that money was due to him is not, if true, a sufficient reason for not requiring accounts. It is rather the reverse. The Defendant in his evidence had said that the Plaintiff never asked him for accounts. The Plaintiff's father died in 1867. The Defendant had been in his service for some years, and after his death continued in the Plaintiff's service till 1886, receiving for his pay only 10 rupees per month. After making full allowance for exaggeration by the Defendant of the value of his services their Lordships do not doubt that he performed some valuable services for the father and for the Plaintiff during the 10 years previous to the purchase of Habibpur, especially in managing an estate in the Sanderband which had been bought by the father for between Rs. 4,000 and Rs. 5,000 and was sold by the Plaintiff for Rs. 39,000 or Rs. 40,000. The Defendant had clearly some claim upon the Plaintiff's generosity. It is true that benami transactions are very common in India, but this deed of sale appears to their Lordships not to be of that character and they will humbly advise Her Majesty to dismiss the appeal and to affirm the decree of the Assistant Judicial Commissioner dismissing the suit. The Appellant will pay the costs.
