

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Sham Sunder Lal v. Musammat Kaiser Zamani Begam, from the High Court of Judicature for the North-Western Provinces, Allahabad; delivered the 2nd July, 1909.*

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Present at the Hearing :

LORD MACNAGHTEN.

LORD COLLINS.

SIR ANDREW SCOBLE.

[*Delivered by Lord Macnaghten.*]

There is no point of law involved in this Appeal. The question for determination, which depends wholly on issues of fact, is this:—Has the Respondent Musammat Kaiser Zamani Begam, who was the Defendant in the suit, a good and valid title to two villages, Bhauna and Bhasaunda, of which she claims to be owner as purchaser for value without notice? Or are those two villages now liable to be attached to answer a decree against one Lalji Mal, deceased, and others, dated the 17th of March, 1897?

The decree of March, 1897, was obtained by the Collector of Bareilly, on behalf of the Court of Wards administering the estate of Nawab Mashuk Mahal Begam then belonging to Muhammed Husain Khan and other co-sharers.

On the 29th of June, 1897, there was an application for execution seeking to attach and bring to sale various properties, including the properties now in suit, as belonging to the judgment debtors against whom the decree was pronounced.

An order for attachment was accordingly made on the 3rd of July, 1897, and the properties were duly attached on the 9th of the same month.

In the meantime, on the 1st of July, 1897, Lalji Mal had executed a deed of sale of the two villages in dispute and a third village, called Patti or Behti, to his brother-in-law Ram Bakhsh. The sale deed was duly registered on the 7th of July, 1897.

The Court of Wards gave up the management of the estate on the 13th of June, 1898, and thereupon Muhammed Husain Khan, under a partition deed dated the 11th of June, 1898, became solely entitled to the money decree against Lalji Mal.

On the 25th of September, 1898, Muhammed Husain Khan purchased the village Patti from Ram Bakhsh.

On the 16th of April, 1900, the Respondent Musammat Kaisar Zamani Begam purchased from Ram Bakhsh the two villages in suit.

On the 17th of March, 1902, the money decree of the 17th of March, 1897, was transferred by Muhammed Husain Khan to Sahu Sham Sunder Lal, the Appellant.

On the 19th of May, 1902, the Appellant sought to attach the property in suit as the property of Lalji Mal. Objections were made by the Respondent. They were sustained by an Order of the 23rd of August, 1902.

On the 20th of September, 1902, the plaint in this suit was filed.

The following issues were settled by the Subordinate Judge :—

- (1) Whether the sale-deed by Lalji Mal to Ram Bakhsh was executed fraudulently without consideration, and to defeat the rights of the present Plaintiff's decree-holders ?
- (2) Whether Kaiser Zamani Begam at the time of the purchase made by her was aware of the sale-deed to Ram Bakhsh being fraudulent and without consideration, and, if not, how would it affect the present suit ?

The Subordinate Judge decided both issues in favour of the Plaintiff. The High Court on appeal decided both in favour of the Defendant.

As regards the first issue, there are undoubtedly suspicious circumstances attending the alleged sale to Ram Bakhsh. The dates are sufficient to create suspicion. It is a suspicious circumstance that no accounts are forthcoming. And the evidence of Ram Bakhsh himself, who for some reason or other supported the Plaintiff and gave evidence on his behalf, is enough to throw doubt on the genuine character of the transaction. But, on the whole, their Lordships are disposed to agree with the High Court in thinking that the learned Subordinate Judge relied too much on mere suspicion, and that there is not sufficient evidence to establish the allegations made on behalf of the Plaintiff.

As regards the second issue, their Lordships agree with the High Court. There is no evidence to show that the Defendant believed, or had reason to believe, that the sale to Ram Bakhsh was fictitious or fraudulent. It is admitted that she gave full consideration for the purchase and that the purchase money was duly paid. It is quite true that, in an application on her behalf for the Lambardarship of the two villages, it was alleged that the sale was fictitious, but her

general attorney, who made the application, stated, apparently with truth, that the allegation was made without consulting her and without her knowledge, and he added that, inasmuch as the Collector decided against the application and appointed Ram Bakhsh Lambardar, he was satisfied that the allegation could not be sustained. And he also deposed that he was impressed by the fact that Muhammed Husain Khan, the Plaintiff's brother, himself bought the village of Patti from Ram Bakhsh, and that it was on his advice that the Plaintiff made the purchase which is now impeached.

Their Lordships agree with the High Court in holding that the Respondent was a purchaser for value without notice.

Their Lordships are therefore of opinion that the Appeal must be dismissed, and they will humbly advise His Majesty accordingly.

The Appellant will pay the costs of the Appeal.