

Privy Council Appeal No. 5 of 1937

Oudh Appeal No. 22 of 1934

Thakur Gajendra Shah - - - - - *Appellant*

v.

Thakur Shankar Bakhsh Singh and others - - - *Respondent*

FROM

THE CHIEF COURT OF OUDH AT LUCKNOW

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 16TH DECEMBER, 1937

Present at the Hearing :

LORD MACMILLAN.

SIR SHADI LAL.

SIR GEORGE RANKIN.

[*Delivered by* LORD MACMILLAN.]

On 8th April, 1923, Harihar Bakhsh Singh, an infant two years of age, died in right of a taluqdari estate known as Haluapur in the district of Sitapur, Oudh, and certain other real and personal property. Disputes arose as to the succession between Shankar Bakhsh Singh, the nearest male agnate of the deceased, and Raj Kuar, the deceased's paternal grandmother. These disputes were settled on terms embodied in a deed of arrangement between them, dated 6th March, 1925. The question which their Lordships have to determine in the present appeal arises on the interpretation of this deed of arrangement.

Under the settlement, as set forth in the deed, Raj Kuar was constituted the tenant for life of the villages owned by the deceased (with certain exceptions immaterial for the present purpose) and was expressly precluded from burdening or transferring them. On her death the villages liferented by Raj Kuar were to become the property of Shankar Bakhsh Singh (again with certain immaterial exceptions). Under paragraph 6 of the deed the movable property left by the deceased was to remain in the possession of Raj Kuar with power "to make any sort of transfer". Paragraph 7 dealt with "several mortgage deeds without possession" standing in the names of previous owners of the estate; as to these Raj Kuar was empowered to utilise or spend the principal and interest "in any way she likes."

Then followed paragraph 8 which has given rise to the present controversy. It is thus expressed:—

“ That there are several properties also which stand mortgaged with possession to the estate regarding which it has been settled that if the mortgagors get these properties redeemed from Musammat Raj Kuar or the said Thakurain Sahiba realizes the amount due under them by means of a suit then she will have the same powers as regards that money and the interest thereon as have been laid down in para. 7, but Musammat Raj Kuar shall have no power to transfer these mortgagee rights.”

Under paragraph 9 it is provided that Shankar Bakhsh Singh “shall be entitled to and enter in possession of the entire property mentioned in paras. 6 to 8 which will be left at the time of Musammat Raj Kuar’s death.”

The mortgages referred to in paragraph 8 fall into three groups. The total amount of principal thereby secured was about Rs.21,000, and the security subjects consisted of shares in certain villages of which the remaining shares formed part of the deceased’s estate. These mortgages had been outstanding for many years and the rents and profits of the mortgaged subjects had been enjoyed by the mortgagees. At the time of the transactions about to be narrated the interest at compound rates had accumulated to an almost fabulous amount, the sum outstanding in the case of one of the mortgages being about three and a half crores. The equity of redemption of all the mortgaged properties was in Sumer Singh.

Such being the position of these mortgages, the following remarkable series of transactions took place in 1930. First, on 13th April of that year, Raj Kuar executed a registered deed in favour of Sumer Singh whereby she purported to “give back” to Sumer Singh and disencumber the mortgaged share in one of the villages in consideration of a payment of Rs.16,500. The sum then due under this mortgage is stated to have been Rs.252,704. Next, on 14th April, 1930, Sumer Singh executed a series of conveyances in favour of Gajendra Shah, the son-in-law of Raj Kuar, whereby he purported to convey to the latter the equity of redemption of the mortgaged shares of the other villages for a total consideration of Rs.2,400. Then on 18th September, 1930, Raj Kuar “returned” to Gajendra Shah the property of these mortgaged shares in consideration of a payment of Rs.40,000. She at the same time executed a lease in favour of Gajendra Shah for ten years of a large number of villages appertaining to the Haluapar estate, but as this has been given up it is no longer of importance save as illustrating the relations between Raj Kuar and her son-in-law.

On 4th April, 1931, Raj Kuar died and Shankar Bakhsh Singh thereupon became entitled to enter into possession of his rights under the deed of arrangement. Confronted with the series of transactions above set out, which, if valid, deprived him of all benefit from the mortgages with possession, he at once initiated the present proceedings against Gajendra Shah and his wife and Sumer Singh, since deceased, whose representatives have been substituted in his place. In his

plaint Shankar Bakhsh Singh challenges the validity of the reconveyances by Raj Kuar of the mortgaged subjects as being in contravention of the deed of arrangement and as colourable and fictitious transactions for the benefit of her son-in-law to the plaintiff's prejudice. The Subordinate Judge at Sitapur upheld the plaintiff's claim and granted him a decree for possession which on appeal was affirmed by the Chief Court of Oudh. Gajendra Shah, the first defendant, then brought the present further appeal to His Majesty in Council.

Before their Lordships, as before the Courts below, the contention of the appellant was that on a sound construction of paragraph 8 of the deed of arrangement Raj Kuar was at liberty to accept any sum she pleased, however small, in redemption of the mortgages in question and that she accordingly acted validly and within her powers in accepting from the appellant Rs.40,000 in redemption of the mortgages on the shares of the villages of which he, the appellant, had acquired the equity of redemption from Sumer Singh, notwithstanding that Rs.40,000 represented only a fraction of the mortgage moneys due.

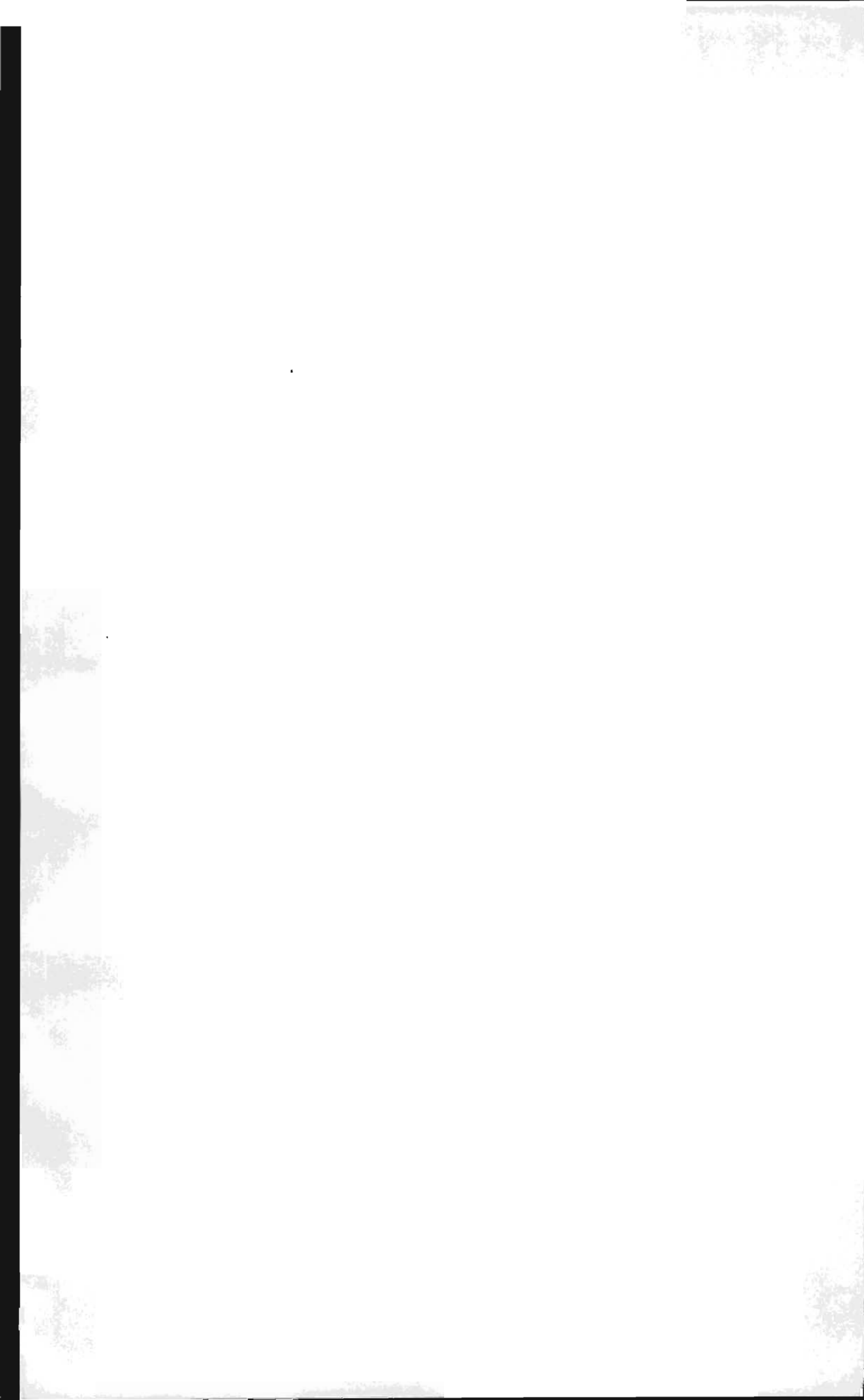
Their Lordships find themselves in agreement with the Courts below in rejecting this reading of the clause in question. At the time when the deed of arrangement was entered into it was manifest that in view of the vast sums outstanding there was no reasonable prospect of the mortgages being redeemed but as the mortgages formed part of the estate it was proper that they should be mentioned and dealt with as items in the compromise. In contrast with the case of the mortgages without possession it was expressly provided that Raj Kuar should have no power to transfer the mortgages with possession. She was to have the principal and interest thereof to do with as she liked only (1) if the mortgagors got the properties redeemed from her or (2) if she realized the amount due under the mortgages by means of a suit.

When it is remembered that the villages had for many years been possessed in their entirety by the owners of the Haluapur estate, as to certain shares in property and as to the remaining shares as mortgagees with possession, it is in the highest degree improbable that Shankar Bakhsh Singh would have agreed to the mortgaged shares being left at the unfettered disposition of Raj Kuar, for that would in effect be the result of permitting her to accept any sum she pleased by way of redemption from the mortgagors. If she was to have no power of transferring the mortgages it was not likely that she should be empowered to extinguish them on any terms she might think fit to accept. In their Lordships' view the sound interpretation of condition (1)—“if the mortgagors get these properties redeemed from Musammatt Raj Kuar”—is—“if the mortgagors redeem the properties by paying up in full the mortgage moneys”. It may be said that this was a contingency so remote as to be inconceivable. That may be so, but in a comprehensive

settlement such as the deed embodied it was quite in order to cover every item of the estate, even if this particular provision was little more than a formality.

Their Lordships do not find it necessary to comment on the character of Raj Kuar's transactions with her son-in-law and Sumer Singh beyond saying that such an interpretation of the terms of paragraph 8 as would authorise transactions of this character is not an interpretation which commends itself either as reasonable in itself or as likely to have been intended by the parties to the deed when they framed it as they did. The transactions challenged thus cannot stand, being beyond the powers of Raj Kuar under the deed of arrangement as their Lordships construe it.

Their Lordships will accordingly humbly advise His Majesty that the appeal be dismissed and the decree of the Chief Court of Oudh of 21st September, 1934, be affirmed. The appellant will pay the first respondent's costs.



In the Privy Council.

THAKUR GAJENDRA SHAH

v.

THAKUR SHANKAR BAKHSH SINGH
AND OTHERS

DELIVERED BY LORD MACMILLAN

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