

Privy Council Appeal No. 7 of 1933

Allahabad Appeal No. 15 of 1931

Nathu Lal - - - - - *Appellant*

v.

The Collector of Budaun - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT ALLAHABAD

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 25TH MARCH, 1938

Present at the Hearing :

LORD WRIGHT.

SIR SHADI LAL.

SIR GEORGE RANKIN.

[*Delivered by* LORD WRIGHT.]

Their Lordships do not find it necessary to hear argument in this case from counsel for the respondent.

The appeal is from a decree of the High Court at Allahabad which affirmed, subject to what will be said later, a decree of the Subordinate Judge of Budaun.

The action was brought by the respondent to obtain a declaration that two deeds, one of the 1st and the other of the 2nd July, 1923, were not binding on the ground that they were obtained by fraud and undue influence. One was a deed of gift of certain properties and the other a deed of sale.

The action also claimed that the decree in suit No. 201 of 1923 was also void and should be set aside on the ground that it had been obtained by fraud.

The Subordinate Judge, in a careful judgment in which he made all possible assumptions in favour of the appellant, the defendant in the action, found that the allegations were made out and that these two deeds and the decree had been obtained by fraud and undue influence and should be set aside. He accordingly made a decree to that effect.

On appeal to the High Court the matter was again fully considered. The facts are carefully discussed by the Court, consisting of the Chief Justice, Sir Grimwood Mears, and Mr. Justice Sen. They gave their reasons fully, and, as far as their Lordships are concerned, those reasons seem to be completely convincing, but it is not necessary for their

Lordships to consider whether they are convincing or not, because this is a case of concurrent findings of fact, the whole question is one of fact, and under such circumstances it is not the practice of this Board to go behind those findings. It may be that, in exceptional cases, where it is clear that some serious injustice has or may be involved, the rule may be departed from, but that is so only in the most unusual circumstances. The rule is one which obviously it is of the utmost importance to maintain, because this Board does not sit for the purpose of reopening findings of fact in which the Courts below have concurred. Their Lordships find it difficult to think of any clearer case for the application of this rule than the present case and on that ground, in their Lordships' opinion, this appeal should be dismissed. Mr. Chinna Durai, who has said all that can be said on behalf of the appellant, has referred to sections of the Indian Contract Act and the Evidence Act, but in their Lordships' opinion these sections do not in any way affect the decision of this case. The result is that, in their Lordships' opinion, this appeal, so far as it deals with the substantial matters at issue, already referred to, should be dismissed.

There was, however, a minor matter which is also included in the appellant's appeal, and that minor matter is not governed by the rule as to concurrent findings, because in respect of it the High Court took a view in favour of the respondent, adverse to the view taken by the Subordinate Judge, who was in favour of the appellant. The sale deed contained in it a statement of an ostensible consideration of Rs.8,000 and the details of this consideration were given under six heads, which, when added up, total Rs.8,000. The Subordinate Judge held that as regards the larger portion of that Rs.8,000 the consideration was fictitious and in decreeing that the sale was invalid he made no order for repayment in respect of that alleged or ostensible consideration. That left a sum of Rs.1,760, as to which the Subordinate Judge held that the appellant had made out a case and he ordered as a condition of his judgment the repayment of that amount by the respondent to the appellant. In the High Court a cross-objection was entered by the respondent in regard to that amount and that cross-objection succeeded. The High Court, differing from the Subordinate Judge, held that they were not satisfied that it had been proved beyond reasonable doubt that these three items Rs.500, Rs.1,750 and Rs.60 were debts actually due from Manohar Singh at the date of the execution of the sale deed. They held these items were fictitious and came to that conclusion on an examination of the original documents which are not before their Lordships. In view of all the circumstances of the case, their Lordships do not feel in any way disposed to differ, and do not differ, from that conclusion of the High Court.

The respondent gave notice that he intended to take a preliminary objection, namely, that leave to appeal in this case ought not to have been granted by the High Court. In view of the fact that their Lordships are advising His

Majesty that the appeal should be dismissed, they do not think it necessary to examine that contention on the part of the respondent. It raises a question which, no doubt, will some day have to be determined by this Board, but, as it is not necessary to determine it in this case, their Lordships are of opinion that it is better to leave it over until it eventually comes to be determined in some other appeal.

For all these reasons, their Lordships are of opinion that the appeal fails and should be dismissed with costs and they will humbly so advise His Majesty.

In the Privy Council

NATHU LAL

v.

THE COLLECTOR OF BUDAUN

DELIVERED BY LORD WRIGHT

Printed by His Majesty's STATIONERY OFFICE PRESS,
Pocock Street, S.E. 1.

1938