

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
Mussamut Mehdi Begum and others v. Roy
Huri Kissen and others from the High Court
of Judicature at Fort William in Bengal;
delivered June 28th, 1876.*

Present :

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

THIS suit is brought by Mussamut Mehdi Begum, the maternal granddaughter and heir of a lady called Mussamut Fahimoonissa, and her father, Lootf Ali, against Roy Huri Kishen and his two sons. It is material in this case to refer to the plaint to see what is the nature of the claim and of the relief prayed. It is "claim for recovery of possession by adjudication of right against the Defendants, and for registration of name in the Collector's office in respect of the mouzahs and shares of the mouzahs mentioned below, situated in the districts of Tirhoot and Patna, by cancelment of a fabricated and fraudulent sale-mokhtarnama, dated the 13th December 1858, purporting to have been executed by Mussamut Fahimoonissa alias Bibi Amun, and the fraudulent deed of absolute sale, dated the 17th December 1858, which appears to have been executed on the basis of the sale-mokhtarnama, and also by cancelment of the mutation proceeding." The plaint then alleges, with some detail of circumstances, that Huri Kishen became the manager of Fahimoonissa's estates, and as such agent was entrusted with her seal

and papers. It then goes on, "Your petitioners, heirs to the said lady, having obtained a certificate, dated the 4th August 1863, under Act XXVII. of 1860, asked the first party Defendant, in the beginning of January 1865, to pay them rent, render an account of the amount collected from villages, and return the said Mussamut's seals and papers. But the said Defendant, who, having the said lady ancestor's seal in his custody, had clandestinely and fraudulently, and through his dependent Lala Jaisuri Lall as mokhtar, prepared the fraudulent and fabricated documents sought to be set aside in the names of his sons, the second party Defendants, under his guardianship, put forward the said documents, and did not return the seal, &c., or render an account of the money collected from the villages. Your Petitioners then made inquiries in the Registry Office, Collectorate, &c., and became certain of the fraud and of the fabrication of the said deeds. From the time of the discovery of the fraud your Petitioners' dispossession occurred." Then it alleges, "The sale-mokhtarnama and the deed of sale are fabricated and fraudulent. The said lady ancestor never executed them, nor received the consideration money."

The written statements of the Defendants assert the genuineness of the deeds. Paragraph 8 states, "The deed of sale and the mokhtarnama were executed and delivered with the knowledge of Fahimoonnissa, the mutation of names was effected by the 'ikrar' (acknowledgment) of the lady herself, and on the depositions of and identification by Lootf Ali himself, the Plaintiff No. 1, and Mirza Wahed Ali, the husband of the Plaintiff No. 2, and the receipt of the consideration money was attested by the said person and other respectable men, and delivered. The allegations of

“ fraud and absence of knowledge of the Plaintiffs and Fahimoonnissa are utterly false and incorrect. The sale-mokhtarnama has been duly attested.” Then the 9th paragraph states, “ Your Petitioners’ purchase, made entirely in good faith, and on payment of the fair consideration money, is valid.

The deeds sought to be set aside are a mokhtarnama, dated the 13th December 1858, given by Fahimoonnissa to Jaisuri Lall, empowering him to sell the mouzahs to the Defendants, the sons of Huri Kishen, for Rs. 71,000; and also a deed of sale, dated on the 17th December in the same year, executed in pursuance of the mokhtarnama. Fahimoonnissa died in 1863. On the 4th of August of that year a certificate under Act XXVII. of 1860, upon the petition of the Plaintiff Mehdi and her father Lootf Ali, claiming to be the heirs of the deceased lady, was granted to them. Lootf Ali, although his daughter is really the heir, is joined with her in this suit, which was not commenced until December 1870, nearly 12 years after the transactions sought to be impeached. No demand appears to have been made on the Defendants in the interval; for although it is alleged in the plaint that a demand was made on Huri Kishen to account for the rents received from the villages, none has been proved.

The case of the Plaintiffs was that Huri Kishen had originally conveyed eight of the nine mouzahs in question to Fahimoonnissa for valuable consideration. Two deeds were put in; one dated the 13th November 1853, by which Huri Kishen, to satisfy a debt alleged to be due to the lady, conveyed the three mouzahs which it is stated he had purchased under a decree. The other deed is dated the 26th March of the same year, by which five

mouzahs obtained by Huri Kishen under similar circumstances were conveyed by him to her, also to satisfy an alleged debt. With respect to another mouzah, evidence was given to show that it was purchased in the lady's own name under a decree she had obtained against one Surroop Narain Singh and others. The Plaintiffs' case further was that Huri Kishen acted as the manager of the lady, received the rents of the villages, and conducted the suits relating to them. It is alleged that he became possessed, for the purposes of this agency, of her seal and papers, and was thus enabled to fabricate the deeds sought to be set aside. The witnesses of the Plaintiffs say that he paid the monies received on account of those villages to Fahimoonnissa down to her death, and even afterwards.

The Defendants do not rest their defence on a denial of all title in the lady to the property; and, indeed, by relying upon the deeds of sale, and by asserting that they were made for a consideration which was actually paid, they virtually admit that she had some right in it. This consideration renders it very difficult to sustain the Judgment of the High Court on the broad ground on which it is put, namely, that the original instruments of sale to Fahimoonnissa, and the deeds of re-sale by her to Huri Kishen's sons, were all colourable; that the mouzahs were originally vested in Fahimoonnissa as nominal owner, to be held by her benamee to protect them from Huri Kishen's creditors; that he received the rents and managed the property on his own account, and not as the lady's agent, and that the reconveyance impeached was executed for the purpose of re-vesting them in his sons by his direction as the real owner. This is an entirely new case, not made by the Defendants, nor did it form the ground of the judgment of the

Subordinate Judge. Still, whatever may be the title under which Fahimoonnissa held the estates, the Plaintiffs who come into court to impeach deeds duly registered, to cancel the mutation of names, and to disturb long possession, have taken upon themselves the burden of sustaining their allegation that the deeds are forged, or that, if executed by Fahimoonnissa, they were obtained from her by fraud. This case is traversed by the Defendants, and is directly involved in the fifth issue.

The delay in bringing the suit has deprived the Defendants of the evidence of the mokhtar Jaisuri Lall and the attesting witnesses to the mokhtarnama, who all died before the hearing. But several of the attesting witnesses to the bill of sale were called to prove that it was in fact executed and acknowledged both by the mokhtar and the lady. It is said that it was highly improbable that it should be acknowledged by the lady herself after she had empowered Jaisuri Lall to make the sale; but it may have been thought desirable to obtain her own declaration. There are, no doubt, as pointed out in the Court below, inconsistencies and contradictions in the testimony of these witnesses, even making allowance for the lapse of time, which might have rendered it unsafe to act upon it, if it had stood alone. But it does not stand alone. It is corroborated by other authentic evidence and by the undisputed circumstances attending the transaction. The mokhtarnama was verified before registration by the Nazir of the Registrar's office of Patna, who took the deposition of the attesting witnesses, and afterwards went to Fahimoonnissa's house, and obtained her acknowledgment of it. She, no doubt, was behind the purdah; and the witnesses who identified her may have deceived the Nazir; but the verification was made in the usual official manner, and may be presumed, in

the absence of proof to the contrary, to have been properly done.

The proceedings for mutation of names afford still stronger corroborative evidence. Another mokhtarnama, dated 26th December 1858, was given by the lady to Jaisuri Lall, empowering him to make the mutation, and was verified by the attesting witnesses at the Collector's office. On the 30th May 1859 a Nazir of the Collector's office went to Fahimoonnissa's house, and took her acknowledgment that she had sold the mouzahs to the Defendants. The acknowledgment is recorded in these terms:—"I have sold
 " the whole and entire eight annas of the entire
 " sixteen annas of the proprietary (malikana) and
 " (altumgha) rights of each of the mouzahs," specifying them, "in conjunction with other mouzahs
 " attached to zillah Tirhoot, for Co.'s Rs. 71,000,
 " the purchase money, to Roy Jai Kishen and
 " Roy Radha Kishen, minor sons under the
 " guardianship of Roy Huri Kishen, by a deed
 " of sale dated the 17th December 1858 A.D.,
 " and have received the purchase money in full.
 " I have no objection to the name of the vendees
 " being recorded in the Government office by
 " the expunction of my name.—*Question.* Is the
 " seal in your possession?—*Answer.* Yes, it is." This acknowledgment is witnessed by the Plaintiff, Lootf Ali, the son-in-law of the lady, and the father of the Plaintiff Mussamut Mehdi, and by her husband Wahed Ali; and their depositions made at the time have been produced from the records of the collectorate. Lootf Ali says, "I
 " know and recognise Mussamut Fahimoonnissa,
 " alias Bibi Amun, vendor, who is now making
 " a declaration as to her having sold the afore-
 " said mousah for Rs. 71,000 to Roy Jai Kishen
 " and Roy Radha Kishen, sons of Roy Huri
 " Kishen, and received the consideration money
 " in full, and to her having no objection to the

“ registration of the names of the vendees by
 “ the expunction of her own name. *Question.*
 “ How did you come to know her?—*Answer.*
 “ Mussamut Fahimoonnissa, alias Bibi Amun,
 “ the vendor, is my mother-in-law, and comes
 “ before me; hence I know her.”

The report of the Nazir, Hadi Ali Khan, has been produced from the collectorate, and this officer was himself examined as a witness in the suit; he says, at page 209 of the record, “ I went to the very
 “ place of Fahimoonnissa in Dewan Mahulla, one
 “ of the quarters of Patna, and duly took down
 “ her admission as to her having made a sale.
 “ Fahimoonnissa made an admission as to her
 “ having effected a sale, but I do not recollect
 “ of what mouzah the deed of sale was; it is, per-
 “ haps, in my report. Syud Lootf Ali and Mirza
 “ Wahed Ali, the relatives of Mussamut Fahimoonnissa, identified her; and Mir Lootf Ali
 “ affixed the seal of Mussamut Fahimoonnissa
 “ at the foot of her admission. I can recognise
 “ Mir Lootf Ali and Mirza Wahed Ali if I see
 “ them.” Then he says, “ I submitted a report
 “ to the Collector, after having taken down the
 “ admission of Mussamut Fahimoonnissa. The
 “ copy which I now see and read in the record
 “ is copy of that report.” It may be observed that Lootf Ali was summoned in this suit to be identified by the Nazir, but excused himself from appearing, on the ground that he was sick. The subordinate Judge thinks this excuse was false, and that he kept away to avoid being confronted with the Nazir. It is impossible to have better proof of the acknowledgment of a lady than this evidence affords. The officer who was deputed to take it appears to have done his duty. The Subordinate Judge says of him,
 “ The open and candid manner in which Mirza
 “ Hadi Ali has deposed satisfies me of his
 “ veracity.” The witnesses who identified the

lady were her nearest male relatives, to whom she was accustomed to appear, and were at the same time those who would be concerned in protecting her property. Whilst, therefore, their Lordships are fully alive to the importance of watching with extreme care the proof of transactions relating to the property of a Purdanasheen, it appears to them credit ought in this case to be given to the evidence, that the acknowledgment of the lady was in fact made as stated by the Nazir.

It further appears to be satisfactorily proved that the possession and enjoyment of the property since the date of the conveyance have been consistent with it; and their Lordships do not believe the witnesses who say that the rents were paid to Fahimoonnissa up to the time of her death. The Subordinate Judge came to the clear conclusion that the document of sale of 1858 had been executed by the authority and with the assent of Fahimoonnissa; and their Lordships see no reason to doubt the soundness of this conclusion. One of the Judges also of the High Court, Mr. Justice Phear, appears to have thought that the documents were really executed, if indeed (of which he expresses rather a strange doubt) Fahimoonnissa was a real person. But both the learned Judges of the High Court agree in thinking that they did not disclose the true nature of the transaction, the lady, in their view, having been throughout the apparent, and Huri Kishen the real owner.

The statements found in the evidence of some pleaders called by the Plaintiffs certainly afford support to this view. It is not, however, consistent with the case put forward by the Defendants; and if the whole issue had lain upon them their Lordships would not have felt justified in allowing so wide a departure from that case. They think, however, as already stated,

that the Plaintiffs have in the first place taken upon themselves the onus of impeaching the instruments of sale. Now, whatever may have been the precise nature of the transactions, their Lordships are satisfied that those instruments were executed, with Fahimoonnissa's knowledge and by her authority, with the intention of vesting the property in the Defendants. They think also that there is no sufficient ground for holding that a fraud was practised upon her by Huri Kishen in obtaining them. It would require strong evidence to support such a case when the nearest male relatives of the lady whose interest it was to preserve her property were not only aware of, but present and concurring, in her acts, and this evidence is not forthcoming.

The grounds on which it may properly be held that the Plaintiffs have failed to sustain their claim are well stated in the judgment of the Subordinate Judge at page 254 of the record: "From the first to the last everything
 " was done with due publicity. Nothing was
 " done in a corner. The mokhtarnama was
 " presented and attested in the moonsiff's court;
 " the kubala was drawn up in the registry
 " office; the kubala and the kubgoolasool were
 " registered; and in the dakhil-kharij cases
 " notifications were made in the mouzahs, both
 " in this district and in Tirhoot, and oozoordars
 " invited, and they did appear. It might be
 " said that the Mussamut having been a purda-
 " nushin female could not personally have
 " information of these things; but this cannot
 " be said of the Plaintiff Lootf Ali, and Wahid
 " Ali, husband of the Plaintiff Medhi Begum,
 " who seems to have lived on terms of close
 " intimacy with Mussamut Fahimoonnissa.
 " They certainly would not have kept the matter
 " from her knowledge, or been backwards in
 " taking immediate measures for frustrating the

“ sinister views of the Defendants. The Defendants took possession of the mouzahs immediately after the sale and leased three of the villages, viz. Muhwa Singh Roy, Muhwa Ram Roy, and Dyalpore, to an indigo concern in Tirhoot, as shown by the registered kubulgut dated the 20th December 1858; yet nothing was done by the Plaintiffs for a period of nearly twelve years.”

In the result their Lordships will humbly advise Her Majesty to affirm the judgment appealed from, and to dismiss this appeal with costs.