

*Judgement of the Lords of the Judicial Committee
of the Privy Council on the appeal of Rani
Janki Kunwar v. Raja Ajit Singh from the
Court of the Judicial Commissioner of Oudh,
Lucknow ; delivered July 20th, 1887.*

Present :

LORD HOBHOUSE.

SIR BARNES PEACOCK.

SIR JAMES HANNEN.

SIR RICHARD COUCH.

THE Appellant in this appeal is the widow of Raja Bijai Bahadur Singh, one of the talookdars of Oudh, who died on the 17th of June 1884. The question in the suit relates to the validity of a deed of sale executed by him on the 29th July 1872. By that deed he professed, on account of the exigency of payment of debts to bankers and decree holders, and of revenue, to sell to the Respondent Raja Ajit Singh, 46 villages with 56 hamlets in consideration of Rs. 1,25,000. Before this transaction took place, proceedings in lunacy under the law for that purpose in India, had been taken against him, which originated in a letter of the Deputy Commissioner of the 7th of January 1871. An inquiry was made into the state of his mind, which ended in an order being made on the 6th of November 1871, by which he was found not to be of unsound mind and incapable of managing his affairs, and upon that he was put into the management of his affairs.

Now it is important to observe that this was not long before the making of the deed of sale, being in November 1871, and the deed

of sale being dated on the 29th of July 1872. So that, although he was, and has been found in some subsequent suits to be, a man of weak intellect, he was at that time considered by the proper authorities, who had made inquiries, to be capable of managing his affairs, and therefore he must be taken to have been capable of entering into contracts, and of knowing the nature of the contracts which he entered into. In 1878 he executed a deed of mortgage to the Respondent Ajit Singh, and in 1879 he also executed a deed of sale to the same person. In 1880 two suits were brought, one by Ajit Singh against Bijai and the Appellant to recover the principal and interest due upon the mortgage, and the other by Bijai and the Appellant to set aside the deed of sale on the ground of fraud, undue influence, and want of consideration. It should be mentioned that shortly before those suits were brought Bijai had made a deed of gift, dated the 1st of November 1879, to his wife, the present Appellant, and it is a matter of remark that she relies upon that deed, and has relied upon it all through the proceedings, at the same time setting up that her husband was a man incapable of entering into the other transaction, and of executing the deed of sale of the 29th July 1872. These suits went through a considerable course of litigation, and were finally determined in favour of Bijai and the Appellant on the 24th of June 1884, by the judgement of this Committee.

The only material date to be noticed in regard to the different proceedings is that of the first judgement, which was given by the District Judge on the 31st May 1881, and the final decision was that the deeds should have effect only as securities for such sums advanced or paid by Ajit Singh as should be proved to have been paid to and received by Bijai Singh

personally, or as Wahaj-ud-deen, the manager of his estate, would have been justified in borrowing in the course of a prudent management of it. That was in 1884.

The present suit was brought on the 16th of February 1884 by Rani Janki Kunwar and Bijai, who had not then died, against Ajit Singh, and the plaint stated that the Defendant Ajit Singh knew that Bijai was a person afflicted with mental and bodily infirmities, and had procured him to execute the deed of the 29th July 1872 at a considerably low price, namely, Rs. 1,25,000, and sought to have that deed set aside on the ground of his being incompetent to execute it, and that it had been obtained by fraud. The plaint also contains this allegation, which is important. "That Plaintiff No. 1"—that is the wife—"then"—that is after the decision of the District Judge, dated the 31st of May 1881, and that of the Judicial Commissioner, dated 17th of January 1882—"commenced to inquire about other matters relating to her husband's property, and on the 25th of August 1882 she came to know of the real facts of fraud, flattery, undue influence, and other matters relating to the deed of sale of the 29th July 1872"—the object of that statement being evidently to show that the suit was not barred by the law of limitation.

Now, the Act XV. of 1877, Article 91, provides that a suit to set aside an instrument not otherwise provided for, which this is not, must be brought within three years from the time when the facts entitling the Plaintiff to have the instrument cancelled or set aside become known to him.

It is necessary then to see whether the suit has been brought within that period. The suit was brought by Bijai in conjunction with Janki Kunwar, and the facts which are mainly relied

upon are these. It is not alleged that the state of his mind was such that it alone would have been a ground for setting aside the deed of sale, and that he was so incapable of entering into any contract that it must be set aside; the case of the Appellant is, that the value of the property was such that, having regard to the amount that was given for it, Rs., 1,25,000, it was an unconscionable bargain on the part of Ajit Singh, affording evidence that the transaction was a fraudulent one on his part, and was brought about by the exercise of undue influence by him, and that in fact he procured Bijai Singh to be surrounded by persons in his, Ajit Singh's interest, and acting for him, and Bijai was not in a condition to have, and had not the advice which he ought to have had.

Now these were facts which must have been known long before the date which the Plaintiff gives as the date of the fraud having come to her knowledge. It is not alleged that any new matter was then discovered. The state of things which existed when the deed of sale was given continued up to the time when the other suits were finally decided. The suit to set this deed of sale aside was originally brought by Bijai himself as well as his wife. They do not seem to have thought that the deed of gift could be solely relied upon. Bijai brings the suit himself, and therefore when considering whether it is barred by the law of limitation, their Lordships have to see what was the state of Bijai's knowledge; because if all the facts were known to Bijai, and he was a man not incapable of having that knowledge and of allowing it to operate on his mind, the case would come within what is stated in this article. Much more than three years would have elapsed after the facts which are said to constitute the fraud were known to him, and so the period

of three years had expired before the suit was brought. That would be sufficient to decide the suit.

Both the lower Courts seem to have treated this question in a manner which cannot be regarded as satisfactory. The District Judge having stated the previous proceedings, says:—
 “Under these circumstances I think it but just
 “that she”—that is, the present Appellant—
 “should be allowed to count her limitation from
 “the 31st of May 1881, the date on which
 “the District Judge decided her husband had
 “been defrauded in the cases then before him.”
 He takes no notice of the fact that Bijai was also a party to the suit, and that his knowledge was a material matter to be regarded, and he fixes, apparently in a somewhat arbitrary manner, on the 31st of May 1881, the date of the decision of the District Judge in the former suits, as that from which the period of limitation would run. That ground cannot be supported. The District Judge has not directed his mind to the real question, which is when the circumstances that are said to constitute the fraud became known to Bijai. Then the Judicial Commissioner deals with the case in a different way. He says the suit is essentially a suit for the possession of immoveable property, and as such falls within the 12 years’ limitation. Now he is clearly wrong there. It was not a suit for the possession of immoveable property in the sense to which this limitation of 12 years is applicable. The immoveable property could not have been recovered until the deed of sale had been set aside, and it was necessary to bring a suit to set aside the deed upon payment of what had been advanced, namely, the Rs. 1,25,000. Therefore there has been on the part of the lower Courts a misapprehension of the law of limitation in this case. Their Lordships are clearly of opinion that the suit falls within Article 91 of the Act XV. of 1877, and is therefore barred.

Upon the other question, which is the main question in the suit, whether upon the facts which have been proved there was a case entitling the Appellant to have the deed of sale set aside, their Lordships have not had any matter laid before them which would lead them to the conclusion that the decision of the Judicial Commissioner that the deed ought not to be set aside should not be allowed to stand. They see no ground for thinking that on that matter he came to a wrong conclusion.

The result therefore is that their Lordships will humbly advise Her Majesty to dismiss the appeal, and to affirm the judgement of the Judicial Commissioner. The Appellant will pay the costs of this appeal.