Privy Council Appeal No. 24 *of* 1929.
Oudh Appeal No. 29 *of* 1927.

Chaudhri Abdul Rahman Khan - - - - - *Appellant*

v.

Lala Parsotam Das and others - - - - - *Respondents*

FROM

THE CHIEF COURT OF OUDH.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 1ST MAY, 1930.

Present at the Hearing :

LORD THANKERTON.
SIR GEORGE LOWNDES.
SIR BINOD MITTER.

[*Delivered by* LORD THANKERTON.]

By deed dated 25th April, 1919, which in form was a deed of *hiba-bil-ewaz*, Syed Ali Haider transferred to the sons of respondent No. 1, Lala Parsotam Das, a village called Mundka or Murka. The deed was registered on 9th May, 1919, and the donees obtained possession on 17th October, 1919. The respondent No. 1 and his sons are members of a joint Hindu family.

The appellant brought the present suit on 12th September, 1925, against the whole members of the joint family, claiming possession of the village of Mundka by right of pre-emption.

Three questions were debated before their Lordships, viz. :— (1) Whether the transaction was of such a nature as would fall within the provisions of Chapter II of the Oudh Laws Act No. 18 of 1876, whereby a right of pre-emption would vest in the appellant ; (2) whether, assuming the right to pre-empt, the true nature of the transaction was fraudulently concealed so as to prevent the appellant from knowing that his right of pre-

emption had arisen, thus deferring the commencement of the limitation period of one year prescribed by Article 10 of Schedule I of the Indian Limitation Act of 1908, to the time when the fraud first became known to the appellant, in virtue of Section 18 of the Act, and (3) if so, whether the appellant had come to know of such fraud at a date less than one year prior to the date of suit.

In order to succeed in his claim the appellant requires a favourable decision on each of these three questions. The Trial Judge found in his favour on all three heads. On appeal, the Chief Court of Oudh found against him on the first head, and found it unnecessary to consider the other two.

The case was fully argued before their Lordships, and while, in view of the opinion formed by their Lordships on the third question, it becomes unnecessary to pronounce a decision on the first and second questions, a short description of some of the circumstances giving rise to these questions is a necessary preliminary to decision of the third question.

Respondent No. 1, Lala Parsotam Das, is a Hindu money-lender in Lucknow, and about 1916 became acquainted with Ali Haider, a Mohammedan, who was then resident in Lucknow. In August, 1918, Ali Haider became entitled by the death of a lady called Taiba Begam to certain property in the Bahraich district, of which the village Mundka formed part. His succession was disputed, but, after an appeal to the Commissioner and the Board of Revenue, he obtained a decision in his favour. Thereafter he executed the deed of gift on 25th April, 1919.

The deed of gift proceeded on the narrative of the intimate relations between Ali Haider and the respondent Lala Parsotam Das, of the large sum of money that the latter had provided towards the expenses of the succession proceedings and other favours and kindness, and " in consideration of favours and kind treatment aforesaid and of rights of friendship " made " a gift for consideration," in favour of the said respondent's sons. On 11th May, 1919, two days after the registration of the deed of gift, Ali Haider granted a receipt to the said respondent for a total amount of Rs. 25,000 made up of (*a*) principal and interest on pronotes Rs. 19,572, (*b*) expenses and purchase of stamp Rs. 1,100, and (*c*) a further advance of Rs. 4,328. It is admitted that head (*a*) represents the " large sums of money " which " Lala Parsotam Das gave me " referred to in the narrative of the deed of gift, that Ali Haider was under obligation to repay them—that obligation being satisfied by the deed of gift—and that the further advance in head (*c*) was part of the consideration for that deed.

The contention of the appellant was that the transaction was in substance one of sale of the village for Rs. 25,000, the price being provided by the discharge of the sums contained in the receipt, that the deed of gift was at first drafted as a contract of sale, but was redrafted as a deed of gift for the purpose of

avoiding pre-emption, that the narrative of friendship and favours was untrue and was solely inserted so as to conceal—as it did—the monetary consideration or price of Rs. 25,000, which constituted the sole consideration. While their Lordships must not be taken as expressing any view as to the soundness of the conclusions of the Chief Court of Oudh, they are of opinion that a deed of *hiba-bil-ewaz*, according to its terms, may either fall or not fall within the pre-emption provisions of the Oudh Laws Act.

Accordingly, the only fact which the appellant, on his construction of the deed of gift, can claim to have been concealed from him was that Rs. 25,000 passed as the sole consideration for the deed of gift.

Assuming that contention to be well founded, counsel for the respondents admitted that such concealment would be fraudulent within the meaning of Section 18 of the Limitation Act.

The appellant alleges that he first came to know of such fraud on 28th June, 1925—less than three months before the date of suit. The respondents, on the other hand, allege that the fact of the passing of the Rs. 25,000 was brought to the appellant's knowledge on five occasions during the years 1919 to 1922.

The learned Sub-Judge, after dealing with the evidence as to each of these five occasions in detail, expresses his conclusion on them as follows :—

> " The evidence led on behalf of the defendants to the effect that the plaintiff had knowledge of the real character of the deed in suit soon after its execution or, in any case, much earlier than the date on which he professes in the plaint to have acquired knowledge thereof, is extremely suspicious and cannot be believed. Besides, most of it, as shown above, is as improbable as ever. It cannot be believed, nor can it help the defendants. I, however, see no good reason to discredit the evidence of the plaintiff and his witness Pandit Budh Sagar, both of whom have, on the whole, given their evidence in a frank and straightforward manner and impressed me favourably."

It is obvious that this conclusion is mainly based on the improbability or incredibility of the respondents' evidence, a view with which their Lordships are unable to agree, as they are of opinion that, taken by itself, there is nothing improbable or incredible in that evidence. Accordingly, the question is whether the respondents' evidence is effectively negatived by the plaintiff's evidence, which consists solely of the appellant's own evidence, for the evidence of the appellant's witness Pandit Budh Sagar has no relation to any of these earlier occasions except in so far as the appellant led him to believe in June, 1925, that he then learned for the first time of the Rs. 25,000 consideration.

Their Lordships find themselves unable to accept the appellant's evidence as to the first occasion, which respondent No. 1 places in July, 1919, and the appellant places at the end of 1919 or beginning of 1920. From the other facts in the case, the former date appears to be the more correct. The statement of

respondent No. 1 is that in July, 1919, he went to appellant's house, accompanied by Mata Prasad, who is now the latter's servant, and said :—

> " Ali Haidar gave me possession, but he is now disturbing it. I gave him Rs. 25,000 for fighting the *taluqa* case, but he is quarrelling with me," that the appellant said, " Ali Haidar's conduct is ungentlemanly. You gave him money when nobody else would have given him a pice," that appellant further said, " If you will transfer one anna share in village Murka to me, I will help you in maintaining your possession," that the witness then said, " I will not transfer any share in Murka to you because the property belongs to minors, but if you fix a reasonable sum I will pay it to you for obtaining your help," and that the appellant said, " If you grudge me one anna share, Lalaji, you will lose Rs. 25,000, and it will be difficult for you to maintain your possession."

The appellant admits the visit, but denies the presence of Mata Prasad, who was not called by him as a witness. He further denies any mention of the Rs. 25,000 consideration and any request for transfer of a one anna share. But the appellant admits that what the respondent No. 1 told him aroused his suspicions that the transaction was subject to pre-emption, that he neither was shown nor asked to see the deed of gift, and cannot remember whether he asked from defendant the reason of the gift. He further denies that he refused to intercede, and yet is unable to give any reason why he did not intercede with Ali Haidar as promised. His story is that, about a month later, he asked his pleader Mahesh Prasad to procure a copy of the deed of gift, and sent him with it to secure a legal opinion in Lucknow as to whether a suit of pre-emption could be brought, and that the opinion was adverse to such a suit. He admits that he paid no fee for the opinion and produces no corroborative evidence of this story. Their Lordships are unable to accept this evidence. The appellant was an honorary magistrate and lived within a mile of the village of Murka and was admittedly interested in the question of pre-emption. The gift was by a Mohammedan to a Hindu moneylender, and their Lordships cannot doubt that it was the mention of the Rs. 25,000 consideration that aroused the suspicions of the appellant as to pre-emption and, in the absence of corroborative evidence, they are not prepared to accept the appellant's story as to obtaining legal advice. The learned Sub-Judge appears to have thought that the appellant's long delay in bringing the present suit was incompatible with early knowledge by him of the true nature of the transaction in issue, but it may be sufficiently explained by the challenge of the deed of gift by Ali Haidar's sons, which was pending during the whole of this period, and in which the appellant was himself a witness for the plaintiffs.

If the defendants' evidence be accepted as regards the first occasion in July, 1919, that is sufficient to dispose of the appellant's case, but their Lordships would add that the appellant's evidence as to the occasion in 1921 in course of the suit to which his wife was a party is most unsatisfactory of itself and that they

see no adequate reason for not accepting the evidence of Parbhu Dayal, an independent witness, as to the occasion in the autumn of 1919.

Their Lordships are therefore of opinion that the appellant became aware in 1919 of the only material fact, viz., the passing of the Rs. 25,000 as consideration for the deed of gift, even if it be assumed that this was the sole consideration of, and was concealed by, the deed of gift, that the suit is thereby statute-barred, and that the appeal should be dismissed with costs. Their Lordships will humbly advise His Majesty accordingly.

In the Privy Council.

CHAUDHRI ABDUL RAHMAN KHAN

v.

LALA PARSOTAM DAS AND OTHERS.

DELIVERED BY LORD THANKERTON.

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