

PRIVY COUNCIL.

AJIT SINGH* (PLAINTIFF) APPELLANT *v.* BIJAI BAHADUR SINGH
AND ANOTHER (DEFENDANT'S) RESPONDENTS :

P. C.*
1884
June 20,
21 and 24.

AND

BIJAI BAHADUR SINGH AND ANOTHER (PLAINTIFFS) APPELLANTS *v.*
AJIT SINGH (DEFENDANT) RESPONDENT.

[On appeal from the Court of the Judicial Commissioner of
Oudh.]

*Equitable conditions—Cancellation of deeds of sale and hypothecation
for fraud.*

Upon the cancellation of instruments of hypothecation and sale on proof of fraud and collusion between the grantee, who had advanced money, and the manager of the grantor's estate, the grantor having been unduly influenced in the transaction, *Held*, that the condition of cancellation should be, not the repayment of all money received by the manager, but only of sums shown to have been paid to the grantor personally, and of such sums received by the manager, as he would have been justified in borrowing in the course of a prudent management of the estate.

APPEALS, with cross appeals (consolidated and heard as one), from two decrees of the Judicial Commissioner of Oudh (17th January 1882), confirming, with a modification, two decrees of the District Judge of Rai Bareli (31st May 1881).

These consolidated appeals, and cross appeals, were preferred in two suits, of which the first was instituted by the appellant Raja Ajit Singh; and the second, in the nature of a cross suit, was instituted by Raja Bijai Bahadur Singh, and his wife, Rani Janki Kunwar.

The judgment of the Court of first instance, the District Court of Rai Bareli, granting in part the relief prayed, was, with a modification in the decree made in the second suit, confirmed on appeal, and cross appeal, by the Judicial Commissioner, who afterwards admitted the present appeal as involving substantial questions of law.

The object of the suit brought by the appellant Raja Ajit Singh, who was talukdar of Tarwal, and also carried on business

* *Present* : LORD WATSON, SIR B. PEACOCK, SIR R. P. COLLIER, SIR R. COUCH, and SIR A. HOBHOUSE.

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as a money-lender, was to have enforced against the respondent and cross appellant, Raja Bijai Bahadur Singh, talukdar of Baklolpur, a mortgage executed by the latter on the 19th June 1878. The object of Raja Bijai's cross suit was to have that mortgage deed set aside, as well as a subsequent deed of sale, of certain villages, executed by him, to the appellant on 26th May 1879, and to have accounts taken. The ground of this suit was that the execution of the above instruments had been obtained by undue influence, exercised on Bijai by this appellant, and Bijai's *karinda*, or manager, named Wahaj-ud-din, they having been in collusion.

The Courts below concurred in finding that Bijai, though not insane, or an idiot, was of feeble intellect and liable to be imposed on; also that the appellant Ajit Singh, without occupying a fiduciary position in the technical sense, had been able to influence the former, and that he had colluded with Wahaj-ud-din, whom he had recommended to Bijai. As the result, this appellant was declared entitled to recover only the amount of the advances made with eight per cent. interest thereon.

On this appeal—

Mr. *B. Macnaghten*, *Q.C.*, and Mr. *R. V. Doyne*, for the appellant and cross respondent, contended that the judgments of the Courts below were not supported by sufficient evidence of undue influence, or of collusion between the appellant and Wahaj-ud-din; that the rate of interest claimed was not excessive; and that the equity had been carried too far against Ajit Singh.

Mr. *J. F. Leith*, *Q.C.*, and Mr. *C. W. Arathoon*, for the respondents and cross appellants, contended that Bijai was only liable for what had been received by him, or had been borrowed for his benefit. A case for further equitable relief had been established.

Mr. *R. V. Doyne*, in reply, cited *Smith v. Kay* (1); *Nevill v. Snelling* (2).

Their Lordships' judgment was, at the conclusion of the arguments, delivered by

SIR R. P. COLLIER.—These appeals are in two suits. The first

(1) 7 H. L. Ca. (1861), 750.

(2) L. R., 15 Ch. Div. 679.

was instituted by Raja Ajit Singh against Raja Bijai Bahadur and Rani Janki Kunwar his wife, who is an independent talukdar, to recover a sum of Rs. 1,37,000, principal and interest, upon a hypothecation bond of the 19th June 1878, from Bijai, against him personally, and for enforcement of a lien against the hypothecated property. The second suit was instituted by Bijai and his wife against Raja Ajit Singh; and it prayed for the recovery of possession, together with mesne profits, of certain property comprised in a sale deed of the 26th May 1879, and for cancellation of the deed on the ground of fraud, undue influence, and want of consideration.

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The issues framed in the two suits were these: In the first suit—(1) “Was the defendant No. 1 (Bijai Bahadur) in an unsound state of mind when he executed the deed of the 19th June 1878?” (2) “Was it executed under fraud and undue influence?” (3) “Did the plaintiff (Ajit Singh) occupy a fiduciary position with reference to defendant No. 1 (Bijai Bahadur)?” (4) “Was the deed executed without consideration having been received by defendant No. 1?” In the next suit the issues were these: (1) “Was the sale deed executed while Bijai was in a sound state of mind?” (2) “Was the deed executed under fraud or undue influence?” (3) The question of consideration.

The findings of the Judge in the Court of first instance on those questions are as follows: On the question of the incapacity of Bijai: “I am of opinion that Bijai’s mental capacity is of the lowest order short of idiocy or insanity; that he has always been incapable of understanding complicated matters of business or exercising an independent judgment.” As to fraud and undue influence: “Bearing in mind the weakness of Bijai Bahadur’s mental faculties, the fact that Wahaj-ud-din and his adherents, in collusion with Ajit Singh, were encumbering his estate; the peculiar circumstances which have already been mentioned in this judgment; the unconscionable and exorbitant nature of the transactions themselves, I am of opinion that the hypothecation deed of 19th June 1878 (on which this suit is based) and the sale deed of the 26th May 1879 were executed under fraud and undue influence.” With respect to the question of fiduciary position, he finds that Ajit was not technically speaking in a

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fiduciary position *quoad* Bijai. With respect to the consideration, he finds that some consideration was advanced; and the effect of his judgment is to order the deeds to be cancelled, but to remain as security for the payment by Bijai of such consideration as he received. This portion of the judgment will be more particularly referred to by and by. This judgment of the Subordinate Judge was affirmed by the Judicial Commissioner of Oudh. Against these judgments there are cross appeals.

The findings on the subject of fraud and undue influence are findings of fact, and their Lordships adhere to the rule, which they have more than once laid down, that they will not, except under peculiar circumstances, interfere with findings of fact by two Courts. But it has been contended on behalf of the appellant in the first suit that there was no evidence to support the findings of the Judge.

This makes it necessary, not indeed to review the evidence at length, but to state shortly some of the main outlines of it. It appears that Ajit and Bijai were two neighbouring talukdars, distantly related. Ajit was the elder. He was a man of acute intelligence, and carried on the business of a money-lender. Bijai was of weak intellect, had been paralysed soon after his birth, and was afflicted with epileptic fits, the tendency of which would be to deteriorate what understanding he had. Bijai, on his father's death, appears to have taken possession of the ancestral estate, and to have so mismanaged it that the Court of Wards thought it necessary to take the management of it upon itself. In 1870 Bijai applied to be restored as manager; and having been examined by the Court of Wards, the estate was released to him. The view taken of his capacity by the Court at that time appears from a judgment to be found at page 25 of the record: "The Court concurs with the assessors that the defendant Raja Bijai Bahadur Singh is not of unsound mind and incapable of managing his affairs. He is feeble, and doubtless easily influenced by artful persons, and incapable of any great effort of body or mind, but he is not at all incapable in the sense meant by the Act." Then they go on to say: "Decree for the defendant," on the ground "that he is not a lunatic"; whereupon

the management of this estate was, their Lordships cannot help thinking unfortunately for him, reintrusted to him.

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With respect to his capacity there is some evidence given by himself in this record, by which, if it is correct,—and it was for the Subordinate Judge who heard the witnesses to determine whether it represented or not the true state of his mind,—it would appear, although he signed various deeds that were put before him, he was not acquainted with the nature of their contents; and that evidence, as far as the accounts are concerned, is to some degree corroborated by that of Wahaj-ud-din, his agent, who says the accounts were written in Persian, a language which he did not understand. Their Lordships, therefore, think there was ample evidence on which the Judge was justified in his finding as to the capacity of Bijai. This being so, it is obvious that a neighbour and a relation, of acute intelligence, would, in all probability, exercise a great influence over him. Upon his being reinstated in the management of his estates it became necessary for him to borrow for the purpose of paying arrears of the Government revenue; and in 1872 it appears that he sold some 50 villages to Ajit for the sum of Rs. 1,25,000, the greater portion of which was appropriated to the payment of the Government revenue. That transaction has not been impugned, and it will not be necessary further to refer to it. At that time, in 1872, the two talukdars seem to have been somewhat estranged. In 1875 they were reconciled. About the time of the reconciliation Ajit took occasion to advise Bijai to employ as his agent, or *karinda*, a man of the name of Wahaj-ud-din. Wahaj-ud-din was entrusted by Bijai with extraordinary powers. We have a document styled a *safinama*, of the 25th August 1875, wherein Bijai entrusts to his manager powers of appointing general agents; of dismissing and confirming *patwaris* and *chowkidars*; of executing documents, leases, and so on; power of borrowing money; power of executing simple bonds for borrowing money, or borrowing money by hypothecation or usufructuary mortgage of property; and a number of powers which the Judge of the Court of first instance describes as “making him in effect the proprietor of the estate.” This document was little less than an abdication on the part of

1884 Bijai of his ownership of the estate in favour of the manager.
 AJIT SINGH It appears to their Lordships that a man in full possession of
 " his faculties would not execute a document of this kind. This
 BIJAI BAHADUR SINGH. manager, Wahaj-ud-din, in pursuance of the powers here given
 him, hired a vast number of servants, displacing the old Hindu
 servants of Bijai by his own friends and protégés, as they are
 somewhere called, so that Bijai was surrounded by Wahaj-ud-
 din and Wahaj-ud-din's Mahomedan adherents. It seems by
 the evidence of several of the witnesses that Ajit and Wahaj-ud-
 din were in the habit of communicating together, and that Ajit
 exercised great influence over Bijai. The powers of borrowing
 given to Wahaj-ud-din were soon exercised. In December of
 that year a bond is prepared by Wahaj-ud-din, and is executed
 by Bijai, whereby he borrows a sum of Rs. 6,000 of Ajit at the
 rate of 24 per cent. The principal of that sum, together with
 interest, accumulated, and in February 1876, two months after,
 another bond of Rs. 9,000 was given; and without going
 through the details of all these transactions, it appears that as
 many as 12 bonds were taken by Ajit from Bijai in the course
 of about three and a half years, the interest and the principal
 rolling on until finally it reached the sum of Rs. 1,37,000, the
 subject matter of this suit. In these cases the money was
 sometimes paid to Bijai, and sometimes paid to his manager.
 He goes through the form—one can hardly suppose it to be
 much more—of writing his name at the bottom of the deeds
 which were witnessed by the Mahomedan servants in the employ
 of Wahaj-ud-din.

It has been contended that there was no foundation for the
 finding in the following terms of the learned Judge that Ajit
 and Wahaj-ud-din acted in concert: "It is impossible not to
 feel convinced that Wahaj-ud-din was gravely mismanaging the
 estate; that by duping his master he was dishonestly benefiting
 himself; that this state of things was fully known to Ajit Singh
 (as admitted by him in his deposition); that the latter was all
 along anxious, fairly or unfairly, to encumber the estate so
 completely as to bring about the result which he seems to have
 had in view, viz., the acquisition of proprietorship of Bijai
 Bahadur's entire taluka."

It is true that there is no direct evidence in the record of a conspiracy between Ajit and Wahaj-ud-din; but they acted together against the interest of this unfortunate talukdar. His agent induced him to sign a number of bonds for sums of money which have been found not to be necessary for the purposes of the estate; and Ajit, whose duty as a relative, a friend, and a neighbour of Bijai, a man of weak intellect, was to have warned Bijai against the proceedings which were going on to his own ruin, so far from doing this, acts in concert with the unfaithful steward, and not only does he act in concert with him, but he profits principally by their joint transactions. Under these circumstances it appears to their Lordships that the learned Judge was amply supported by the evidence in his finding.

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Such being the finding of the learned Judge, and the concurrent findings of two Courts, supported by adequate evidence, it follows that that judgment must be supported so far as the cancellation of the deeds is concerned, and that the appeal of Ajit must be dismissed.

But another question is raised by the cross appeal. The finding of the learned Judge, with respect to the consideration for the deeds, is in these terms (it seems that the evidence of advances was that money was paid from time to time, in the presence of the registrar of the Court, sometimes being handed to Bijai himself, sometimes to his manager): "But having considered the evidence, I am satisfied that the principal sums in cash, said to have been advanced at various times by Ajit Singh, were made over either to Bijai Bahadur, or on his behalf to his *karinda* Wahaj-ud-din;" and in accordance with that finding, he says: "I am of opinion that substantial justice will be done between the parties if the plaintiff is decreed the principal sums advanced by him, together with interest at 8 per cent. per annum on each of the sums calculated from the date of the suit, *viz.*, 23rd January 1880, and no interest allowed subsequent to the date of the suit." He treats as sums proved to have been advanced all the principal payments which were made. It has been argued, not that this finding is wrong in point of fact, but that the learned Judge has made a mistake in point of law; and their Lordships think that the judgment relating to these payments cannot be supported. The finding, as before observed, is that the

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sums were paid either to Bijai Bahadur, or on his behalf to the *karinda* Wahaj-ud-din. The learned Judge appears not to have applied his mind to the question as to how much actually got into the hands of Bijai himself; with reference to which sums it would seem difficult to say that he could have a right to cancel the deeds without repaying them. But considering the relations that have been found to exist between Ajit and Wahaj-ud-din, their Lordships are of opinion that Ajit cannot raise a claim against Bijai merely by showing that he paid money to Wahaj-ud-din; he must show further that his advances were really applied to the benefit of Bijai, or were properly borrowed on his behalf.

Under these circumstances it appears to their Lordships that the decree of the Court below requires some amendment; and they propose to advise Her Majesty that that decree should be amended in this way: They think it should be varied by directing that, instead of the account which the Munsarim is thereby ordered to take, it be referred to the Munsarim to take the following accounts: first, of such sums advanced by Ajit as shall be proved to have been paid to and received by Bijai personally; secondly, an account of such sums advanced by him as Wahaj-ud-din would have been justified in borrowing in the course of a prudent management of Bijai's estate; thirdly, an account of what is due upon such advances for simple interest at 8 per cent, from the date of the advance to the time of payment. Their Lordships cannot quite concur with the learned Judge in holding that the interest should be confined to the date of the suit. Their Lordships think that the decree in the other case, which is in many respects the same, but has peculiar circumstances affecting it (that is, the first suit by Bijai and his wife) should also be amended to the same extent.

Under these circumstances their Lordships will humbly advise Her Majesty that the decrees be varied in the manner stated. It appears to their Lordships that Bijai and his wife are entitled to the costs of both appeals.

Decrees varied.

Solicitors for the appellant Raja Ajit Singh; Messrs. *Lawford, Waterhouse and Lawford.*

Solicitors for the respondents Raja Bijai Bahadur and Rani Janki Kunwar: Mr. *J. L. Wilson.*