

can overthrow that of the purchaser by showing either that he had direct notice, or something which amounts to constructive notice of the real title, or that there existed circumstances which ought to have put him upon an inquiry that, if prosecuted, would have led to a discovery of it." On the findings of the lower appellate Court it is impossible, we think, to say that the defendants in this suit either had constructive notice of the real title, or that there existed any circumstances which ought to have put them upon an inquiry which, if prosecuted, would have led them to a discovery of it. On the contrary, we think that where a person is found in possession of property, is recorded as owner, and holds the title deeds of the property and deals with a third party in respect of it, there is nothing to suggest a want of good faith in such third party in dealing with him in respect of the property. We do not think that the defendants respondents were called upon under the circumstances to communicate with the father of the mortgagor and inquire from him as to the title. For these reasons we do not see our way to differ from the learned District Judge. We think that the case is one coming within the provisions of section 41 of the Transfer of Property Act, and that the defendants are protected by that section. We therefore dismiss the appeal with costs. The objections filed by the defendants respondents are not pressed. They are also dismissed with costs.

Appeal dismissed.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Banerji.

LALLA MAL AND OTHERS (PLAINTIFFS) v. KESHO DAS AND OTHERS
(DEFENDANTS).*

Act No. XXVI of 1881 (Negotiable Instruments Act), section 10—Payment in due course—Shahjog hundi.

A hundi was drawn by a firm at Agra on their branch in Bombay. The payees endorsed the hundi over to one L. M., who sent it to his agent at Bombay for collection. The agent died suddenly, and thereupon the drawers at the request of the payees telegraphed to their branch in Bombay to stop payment. Notwithstanding this, on the hundi, which was a *shahjog hundi*, being presented to the drawers' Bombay branch by one Channu Mal, who had

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* Second Appeal No. 317 of 1900, from a decree of W. F. Wells, Esq., District Judge of Agra, dated the 19th of February 1900, modifying a decree of Munshi Raj Nath Prasad, Subordinate Judge of Agra, dated the 13th of May 1899.

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somehow obtained possession of it, was cashed. *Held* that this did not amount to a payment in due course such as would discharge the drawers and endorsees. *Bhupat Ram v. Hari Prio Coach* (1) referred to.

A *shahjog* hundi is only payable to the respectable holder and is not equivalent to a hundi payable to bearer.

THIS was a suit to recover the sum of Rs. 1,000 and interest due upon a hundi under the following circumstances. Kesho Das and Khem Chand, carrying on business at Agra under the style of Tara Chand Chela Ram, drew at Agra a *shahjog* hundi upon their own branch in Bombay payable to Sham Lal and others. The payees endorsed this hundi to Lalla Mal, who sent it to his agent in Bombay, one Kashi Nath, for collection. Kashi Nath, before he was able to obtain payment of the hundi, was seized with the plague and died on the 14th of March 1898. On the 15th of March Lalla Mal went to the drawers of the hundi and induced them to send a telegram to Bombay to stop payment of the hundi if it had not been already paid. The answer received to this telegram was—"hundi received, not paid, Rs. 1,000." On the 16th of March, however, one Channu Mal, in whose house Kashi Nath had been living, having in some manner, but without the authority of Kashi Nath, got possession of the hundi, brought it to the office of the drawers and obtained payment. The present suit was brought by the endorsee Lalla Mal, his minor sons being also joined as plaintiffs, against the drawers, the endorsers and Channu Mal, the person who had in fact obtained payment of the hundi. The Court of first instance (Subordinate Judge of Agra) gave the plaintiffs a decree; but on appeal by the drawers the lower appellate Court (District Judge of Agra) reversed the decree of the first Court and dismissed the suit. The District Judge held that the payment to Channu Mal was a good discharge, treating a *shahjog* hundi in effect as equivalent to one payable to bearer. The plaintiffs thereupon appealed to the High Court.

Pandit *Sundar Lal*, for the appellants.

Pandit *Moti Lal Nehru* and the Hon'ble Pandit *Madan Mohan Malaviya* (for whom Dr. *Tej Bahadur Sapru*), for the respondents.

STANLEY, C. J., and BANERJI, J.—The suit out of which this appeal has arisen was brought by the plaintiffs appellants for recovery of the sum of Rs. 1,000 and interest alleged to be due to them under the following circumstances. The defendants Nos. 4 and 5 carry on business at Agra under the style of Tara Chand Chela Ram and have a branch establishment at Bombay. They drew a *shahjog* hundi at Agra on the Bombay branch of their firm, payable to the defendants 1 to 3. The payees endorsed the hundi to the plaintiffs, who sent it to their agent at Bombay, one Kashi Nath, for collection. It appears that Kashi Nath, before he was able to obtain payment of the hundi, was seized with plague and died on the 14th of March, 1898. The plaintiffs appear to have been early apprised of this fact, for we find that on the following day, the 15th of March, they went to the drawers of the hundi and induced them to send a telegram to Bombay to stop the payment of the hundi if it had not been already paid. The answer to this telegram was “hundi received, not paid Rs. 1,000.” Therefore on the 15th of March the drawers were aware that the hundi was not to be accepted or paid. Notwithstanding this, on the 16th of March, the defendant Channu Mal, in whose house Kashi Nath lived, got possession of the hundi, without, as has been found, the authority of Kashi Nath, brought it to the office of the drawers and obtained payment. Under these circumstances the question is whether or not the defendants are liable to the plaintiffs for the amount so paid. Now it is to be observed that the hundi is a *shahjog* hundi, not a hundi payable to bearer, but payable to a “respectable holder.” The Court of first instance found in favour of the plaintiffs’ claim and gave a decree accordingly. But on appeal the learned District Judge reversed the decision of the Court below and dismissed the suit. The District Judge appears to consider that a *shahjog* hundi stands in the same position as a hundi payable to bearer. But this is clearly not so, as has been held by a Bench of this Court in the unreported second appeal No. 422 of 1896, in which it was held that a *shahjog* hundi is only payable to a respectable holder. The same question came before one of us when sitting in the High Court at Calcutta in the case of *Bhupat Ram v. Hari Prio*

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Coach (1). There the law upon the subject was discussed at considerable length, and it was ruled in accordance with previous authorities that a *hundi* payable "*shahjog*" is only payable to the respectable holder and is not the same as a *hundi* payable to bearer. This question, however, is not of very much importance in deciding the present appeal, because we are clearly of opinion that in making the payment to Channu Mal under the circumstances the drawees failed to exercise any proper discretion and did not make payment in due course within the meaning of section 10 of the Negotiable Instruments Act. On the contrary, having had the notification contained in the telegram to which we have referred, they ought to have exercised extreme caution in making payment, if they made payment at all, until they had received further instructions. In making the payment to Channu Mal they acted negligently, not having any reasonable ground for believing that Channu Mal was entitled to receive payment. We therefore must allow this appeal. The learned District Judge is wrong in supposing that the drawees would not have been justified under the circumstances in refusing to pay to any person who came to them with the *hundi* for payment. They were bound to see that the note was paid in due course, as pointed out by us, and within the meaning of section 10 of the Negotiable Instruments Act. For these reasons we are of opinion that the view taken by the Court of first instance was correct, and therefore we allow the appeal, set aside the decree of the lower appellate Court and restore the decree of the Court of first instance. The defendants respondents must pay the costs of this appeal and also the costs in the lower appellate Court. The objection under section 561 necessarily fails, and is dismissed with costs.

Appeal decreed.