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mere mortgage in the form of a sale must depend on the intention of the parties to be gathered from the language in which the transaction is carried out, supplemented, it may be, by oral evidence. If we attach their true meaning to the recitals which we have referred to above, it must, we think, be held that the transaction was intended by the parties to be an out and out sale with an agreement for repurchase. In view of the language used we are of opinion that the courts below rightly held that the plaintiff had no right to redeem the property. If he intended to rely upon the agreement for repurchase, he ought to have paid his money within the time limited by the document. Having failed to do so, he must abide the consequences. We dismiss the appeal with costs.

Appeal dismissed.

PRIVY COUNCIL.

P. C. 1911 *February* 14.

HANIF-UN-NISSA AND ANOTHER (DEFENDANTS) v. FAIZ-UN-NISSA AND ANOTHER (PLAINTIFFS.)

[On appeal from the High Court of Judicature at Allahabad.]

Act No. 1 *of* 1872 (*Indian Evidence Act*), *section* 92—*Admissibility of evidence to show that a document purporting to be a sale-deed is in reality a deed of gift.*

In the appeal their Lordships were of opinion that the decree of the High Court in *Faiz-un-nissa* v. *Hanif-un-nissa* (1) could not be supported and remitted the case to the High Court to be dealt with on the evidence.

APPEAL from a judgement and decree (17th April, 1905) of the High Court at Allahabad, which reversed a decree (5th November, 1902) of the Additional Subordinate Judge of Aligarh.

The main questions for determination on this appeal were, (*a*) whether a deed of sale, dated the 27th of September, 1889, executed by the plaintiff (respondent) in favour of the appellants and another, embodied a genuine transaction, or was merely a fictitious deed; and (*b*) whether or not the appellants should be allowed to give parole evidence for the purpose of showing that the executant of the aforesaid deed, which purported

Present:—Lord MACNAGHTEN, Lord ROBSON, Sir ARTHUR WILSON and Mr. AMEER ALI.

(1) (1905) I. L. R., 27 All., 612.

to be, and was, a deed of sale on the face of it, did not intend to take the purchase money therein specified from the vendee.

The Subordinate Judge held that natural love and affection was the real consideration for the deed of sale, and that it was, therefore, not fictitious, but "a real conveyance by which ownership with possession was transferred." He also held that the plaintiff was estopped from claiming any relief against the transferees. He accordingly made a decree dismissing the suit with costs. On appeal the High Court (Sir JOHN STANLEY, C. J. and Sir W. BURKITT, J.) were of opinion that the defendants were precluded by the provisions of section 92 of the Evidence Act (I of 1872) from giving oral evidence to show that the deed of sale was in reality intended by the executant to be a deed of gift: and they held that the question was concluded by the decision of the Privy Council in the case of *Balkishen Das* v. *Legge* (1). They therefore reversed the decree of the Subordinate Judge. They did not, however, give the plaintiff a decree for possession of the property; but they gave her a decree for Rs. 60,000 with interest from the date of the decree, and declared her entitled to a charge for the decretal amount on the property in the hands of the transferees (the three principal defendants). The facts of the case are fully stated in the report of the case in the High Court which will be found in I. L. R., 27 All., 612.

On this appeal:—

W. A. Raikes, for the appellants.

De Gruyther, *K. C.*, and *B. Dube*, for the respondents.

1911, *February 14th*:—The judgement of their Lordships was delivered by Lord MACNAGHTEN:—

Their Lordships think the decree appealed from cannot be sustained. They are of opinion that the proper course will be to remit the case to the High Court to be dealt with on the evidence, and they will humbly advise His Majesty accordingly. The costs of the further hearing will be costs in the cause. As the appellants have been successful upon the point

(1) (1899) I. L. R., 22 All., 149: L. R., 27 I. A., 58.

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of law, they will have their costs of the appeal incurred in England.

Appeal allowed and case remanded.

Solicitors for the appellants :—*T. C. Summerhays & Son.*

Solicitors for the respondents :—*Barrow, Rogers & Nevill.*

P. C. 1911 *February* 15.

BHAWANI KUNWAR (DEFENDANT) *v.* HIMMAT BAHADUR AND ANOTHER (PLAINTIFFS).

[On appeal from the High Court of Judicature at Allahabad.]

Hindu Law—Widow—Payment by wife of husband's debts during his lifetime—Voluntary payment—Absence of proof of obligation to repay—Onus of proof.

In this case, which was an appeal from the decision of the High Court in the case of *Himmat Bahadur* v. *Bhawani Kunwar* (1) the Judicial Committee merely affirmed that decision on the ground that the appellant on whom the onus lay had not proved that there was any obligation on the part of the husband or his estate to pay the moneys which were paid by his wife, and dismissed the appeal.

APPEAL from a judgement and decree (1st May, 1908) of the High Court at Allahabad, which reversed a decree (11th August, 1905) of the Subordinate Judge of Shahjahanpur.

The question for determination in this appeal was as to the right of the respondents (plaintiffs) to recover from the appellant (defendant) certain property in her possession which the plaintiffs alleged had originally belonged to their maternal grandmother, and which they alleged had been sold by her without legal necessity to one Jiwan Sahai, the vendor to the appellant.

The Subordinate Judge dismissed the suit with costs. On appeal the High Court (Sir JOHN STANLEY, C. J. and KARAMAT HUSAIN, J.) reversed that decree and gave the plaintiff a decree for possession of the property on certain terms. The facts of the case will be found fully stated in the judgement of Mr. Justice KARAMAT HUSAIN reported in I. L. R., 30 All., 352.

On this appeal :—

W. A. Raikes, for the appellant, contended that there was abundant evidence of the legal necessity ; that the respondents being daughter's sons the question of legal necessity did not really

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(1) (1908) I. L. R., 30 All., 352.