1920

MUHAMMAD MUSHTAQ ALI KHAN v. BANKE LAL.

We think that the second contention for the plaintiffs that a tender made in June would be a valid tender is right if made within time—the end of June.

The appeal, therefore, fails and is dismissed with costs. In calculating the costs of this Court the office will exclude the cost of printing the evidence on behalf of the respondents, as that evidence was not necessary for the disposal of the points raised in this appeal.

Appeal dismissed.

PRIVY COUNCIL.

LAL JAGDISH BAHADUR SINGH (PLAINTIFF) *v.* MAHABIR PRASAD SINGH (DEFENDANT).

And two other appeals: three appeals consolidated.

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

*P. C. 1920 *January*, 26, 27, *February*, 17.

Oudh Estates Act (*I of* 1869), *sections* 2 *and* 16—*Transfer by taluqdar of part of taluq—Transferee's title based on will of deceased taluqdar—Transfer in accordance with will—Absence of registration under Act.*

These appeals related to lands owned by the taluqdar of Dhangarh whose name was one of those entered in the 4th list prepared under section 8 of the Oudh Estates Act (I of 1869). He died in 1896, leaving a great-grandson, the appellant, and three grandsons (uncles of the appellant) the respondents; and having made a will, dated the 30th of August, 1892, and registered under section 18 of the Act, by which he devised the taluq to the appellant, a minor, and appointed the mother of the boy to be his guardian and the first respondent to be manager of the estate during his minority. The will also provided that in case the respondents separated from the appellant, they should receive a maintenance allowance in the form of grants of taluqdari villages to be selected by the appellant. On the death of the testator the first respondent entered on the management of the estate in accordance with the directions of the will until 1908 when the appellant attained his majority and assumed possession and control of it, the respondents continuing to reside with him. But in 1910 they separated from the appellant, and he made grants to them of villages, of which mutation of names took place in 1911, the villages declared to be held by the several respondents "for generation after generation without right of transfer."

Section 16 of Act I of 1869 enacts that no transfer otherwise than by gift of any estate or any portion thereof, or of any interest therein made by a taluqdar . . . under the provisions of this Act shall be valid unless made by a registered instrument signed by the transferor, and attested by two or more

*Present: Viscount CAVE, Lord MOULTON, Sir JOHN EDGE, and Mr. AMEER ALI.

witnesses." By section 2 of the Act "transfer" is defined as meaning "an alienation *inter vivos*."

In suits brought by the appellant to recover possession of the villages granted to the respondents on the ground (among others) that the grants were invalid as not having been made by a registered and attested deed as required by section 16.

Held that the respondents' right to maintenance out of the estate was conferred by the will which imposed on the taluqdar the duty of selecting the villages from which the maintenance should be derived. In making this selection the taluqdar imposed no additional burden on the estate, but limited and defined, in accordance with the will, the burden thereby imposed. The selection once made and accepted could not be disturbed either by the taluqdar or the *guzara*-holders, and no registered and attested deed was required, the provisions of the will followed by the appropriation of villages and delivery of possession vesting in the *guzara*-holders a good and sufficient title. Section 16 of Act was therefore not applicable.

CONSOLIDATED APPEALS 37, 38 and 42 of 1919 from a judgment and three decrees (13th September, 1916,) of the court of Judicial Commissioner of Oudh, which reversed a judgment and three decrees (9th September, 1914,) of the Subordinate Judge of Partabgarh.

The questions for determination on this appeal were whether the defendants had obtained possession of the property in suit (certain villages) by the exercise of undue influence; and whether the alienations of the property sued for were invalid as not having been registered in accordance with section 16 of the Oudh Estates Act (I of 1869).

The Subordinate Judge decreed the suits on the ground that there had been undue influence, but that decision was reversed by the Court of Appeal; and both courts below found that section 16 of Act I of 1869 was not applicable.

For the purposes of this report the facts will be found sufficiently stated in the judgment of the Judicial Committee.

On this appeal—

Dunne, K. C., and *B. Dube* for the appellant contended that the courts below had erred in holding that the transaction in dispute was not a transfer under section 16 of the Oudh Estates Act (I of 1869), and that registration was therefore not required. The grant of land contemplated in clause 6 of the will of the 30th of August, 1892, was altogether a matter of discretion on the part of the appellant; and on a proper construction of the will the

1920

LAL JAGDISH BAHADUR SINGH v. MAHABIR PRASAD SINGH.

respondents were entitled to maintenance allowance which was not a charge on the taluqa : and no interest or title under any grant made by the appellant could pass without a registered document in accordance with the provisions of the above-named section (16) of the Oudh Estates Act. Reference was made to *Maung Shwe Goh* v. *Maung Inn* (1). The onus of proving the absence of undue influence as inducing possession of the property was on Mahabir Prasad Singh, and he had not discharged it.

De Gruyther, K. C., and *Kenworthy Brown* for the respondents contended that it was too late to maintain a suit to eject the respondents after possession of the property had been given and accepted, even if there was under the Oudh Estates Act any obligation to register the transfers. Reference was made to *Mahomed Musa* v. *Aghore Kumar Ganguli* (2) and *Venkayyamma Rao* v. *Appa Rao* (3). But no obligation to register arose, as no interest in the estate *inter vivos* had been transferred. *Abdul Razzak* v. *Amir Haidar* (4) and *Indar Kunwar* v. *Jaipal Kunwar* (5) were referred to. Where there is no transfer of an interest in the taluqa a grant for maintenance allowance is not a grant under the Act.

Dunne, K. C., in reply contended that the suit was maintainable as without registration no title passed to the respondents ; and reference was made to *Immudipattam Thirugnana Kondama Naik* v. *Periya Dorasami* (6), *Lalchand* v. *Lakshman* (7) and *Kurri Veerareddi* v. *Kurri Bapireddi* (8). In *Mahomed Musa* v. *Aghore Kumar Ganguli* (2) no written document was needed. In the present case the defence was based on title not on any equitable right; there was, therefore, a transfer of interest *inter vivos*. The case of *Udai Raj Singh* v. *Bhagwan Bakhsh Singh* (9) was distinguished.

(1) (1916) I. L. R., 44 Calc., 542 : L. R., 44 I. A., 15.

(2) (1914) I. L. R., 42 Calc., 801 : L. R., 42 I. A., 1.

(3) (1916) I. L. R., 39 Mad., 509 : L. R., 43 I. A., 138.

(4) (1884) I. L. R., 10 Calc., 976 : L. R., 11 I. A., 121.

(5) (1888) I. L. R., 15 Calc., 725 : L. R., 15 I. A., 127.

(6) (1900) I. L. R., 24 Mad., 377 : L. R., 28 I. A., 46.

(7) (1904) I. L. R., 28 Bom., 466.

(8) (1906) I. L. R., 29 Mad., 336 ; L. R., 37 I. A., 46.

(9) (1910) I. L. R., 32 All., 227 : L. R., 37 I. A., 46.

1920

LAL JAGDISH BAHADUR SINGH v. MAHABIR PRASAD SINGH.

1920, February, 17th :—The judgment of their Lordships was delivered by Viscount CAVE :—

These are consolidated appeals from the decree of the Court of the Judicial Commissioner of Oudh, dated the 13th of September, 1916, which reversed a judgment and three decrees of the Subordinate Judge of Partabgarh, dated the 9th of September, 1914.

The suits relate to lands in the taluq of Dhangarh, in Oudh. Lal Sitla Bakhsh Singh was taluqdar of the taluq, and his name was entered in the fourth list prepared under section 8 of the Oudh Estates Act of 1869. He died in the year 1896, having survived his only son and his eldest grandson, and leaving him surviving his great-grandson, the appellant, Lal Jagdish Bahadur Singh, and three grandsons, the respondents, Babu Mahabir Prasad Singh, Babu Gajadhar Bakhsh Singh, and Babu Sidhpal Singh.

Lal Sitla Bakhsh Singh, by his will, dated the 30th of August, 1892, devised the taluq to the appellant and appointed the appellant's mother to be his guardian and the respondent, Babu Mahabir Prasad Singh, to be manager and *sarbarahkar* of the estate during the appellant's minority. Clauses 6 and 7 of the will provided for the maintenance of the respondents and were as follows :—

"(6) That when Babu Mahabir Bakhsh Singh, Sidhpal Singh, uncles of Lal Jagdish Bahadur Singh, minor, separate themselves from him, they shall receive from Lal Jagdish Bahadur Singh, the owner of the estate, maintenance allowance as per following detail. This maintenance allowance should be allowed in the form of the grant of land of the entire village or a portion thereof, so that, after the payment of the Government revenue and 10 per cent. taluqdari dues, maintenance allowances to the following extent be left over to the *guzara*-holders out of the gross rental of the village (or the land, i.e., to the extent of Rs. 950 annually to Babu Mahabir Bakhsh Singh, Rs. 700 to Sidhpal Singh and Rs. 400 to Babu Gajadhar Bakhsh Singh. In case of the *guzara*-holders' separation, the land or the entire village given to them shall not be interfered with by the proprietor of the estate except that he shall receive the Government revenue and 10 per cent. (his own dues). The responsibility, preservation and supervision of the boundary line and the *sewana* and the compliance with Government orders shall rest with the *guzara*-holders, the owner of the estate having nothing to do with the same. So long as Sidhpal Singh and Gajadhar Bakhsh Singh remain joint with Lal Jagdish Bahadur Singh, minor, the former may get Rs. 200 cash and the

1920

LAL JAGDISH BAHADUR SINGH v. MAHABIR PRASAD SINGH.

latter Rs. 100 annually, besides food and raiment, to meet their personal needs; and in case of separation, they will get the maintenance allowance mentioned above, and the cash allowance will be stopped.

"(7) That the maintenance allowance of the aforesaid *guzara*-holders shall always continue, without the power of alienation, generation after generation; but in case of there being no male issue to the *guzara*-holder or children in direct line of descent from him, the maintenance allowance shall not devolve upon any heir under the Hindu law or to any other person, irrespective of the fact that he is one of the *guzara*-holders or not; rather the allowance, having been resumed, shall be included in the taluqa in possession of the proprietor thereof, though he may be lower in degree by descent."

The testator died, as above stated, in the year 1896, the appellant being then about nine years of age. The respondent Mahabir thereupon entered on the management of the estate in accordance with the directions of the will, and retained such management until the year 1908, when the appellant attained the age of twenty-one years. In the last-mentioned year the appellant assumed possession and control of the estate, his uncles continuing to reside with him.

In the year 1910, when the appellant was about twenty-three years of age, disputes arose in the family, and it was determined that the respondents should live separately from him and should receive maintenance in the form of villages to be appropriated for that purpose under the will. The appellant, to whom the will gave the power and duty of selecting villages for this purpose, allotted to the respondent Mahabir the village of Miranpur, to the respondent Gajadhar three other villages, and to the respondent Sidhpal two other villages. Possession of the villages so allotted was given to and accepted by the three respondents, who subsequently paid rent to the appellant for the allotted villages. Shortly afterwards the respondents, who were desirous of being entered as proprietors of the villages allotted to them respectively, took proceedings for mutation of names. The appellant, who had no objection, petitioned that the mutation should be allowed "by virtue of the deed of will," and on the 6th of January, 1911, he attended personally before the Tahsildar and made a statement in support of his petition. This statement, which shows the position then taken up by the appellant, was in the following terms:—

"In accordance with the condition of Lal Sitla Bakhsh Singh's will, dated the 30th of August, 1892, I having given village Miranpur to Mahabir

Bakhsh Singh, villages Nagiamau and Bhitari to Babu Sidhpal Singh, and Sarai Nain Kuar, Pura Kharagman, included in Pura Basdeo and Pura Chamela, Mahal of nine annas share, to Babu Gajadhar Bakhsh, delivered possession to them. Mutation in their favour be effected separately according to their applications. I have no objection.

"Again stated.—In the abovementioned villages only under-proprietary right was transferred to these *guzaradars*. The superior right will remain vested in me, and I will be liable for depositing the Government revenue.

"The *guzaradars* will have this right, generation after generation, but without any right of transfer. The mutation should be effected in the same manner."

Orders were accordingly made on the 17th of February, 1911, that mutation be made in favour of the several respondents "generation after generation, without any right of transfer, in lieu of maintenance allowance."

So far no difficulty had occurred; but unfortunately a question subsequently arose in the office of the Registrar as to the form in which the record should be made, and in connection with this question the appellant and Mahabir again attended before the Tahsildar on the 20th of October, 1911. At this meeting the appellant again affirmed that he "had given the village Miranpur as *guzara*, generation after generation, without any right of transfer, according to the terms of the deed of will executed by the late Lal Sitla Bakhsh Sihgh, taluqdar," and stated the rental of the property allotted, with a view to the mutation being completed; but after this statement had been taken down Mahabir for the first time alleged that he had got the village Miranpur as a reward for his services during the taluqdar's minority and not as *guzara* under the will. This claim, for which there was no justification, appears to have greatly irritated the appellant, who said that he would give nothing over and above the maintenance provided by the will, and afterwards, viz., on the 22nd of November, 1911, retaliated by applying for leave to withdraw the three applications for mutation of names. The Tahsildar, on the 24th of November, refused this application and directed the mutation to proceed, adding that if the appellant was dissatisfied, the civil court was open to him. An application by the appellant to the Assistant Collector to set aside the registration was successful, but this decision was

1920

LAL JAGDISH BAHADUR SINGH v. MAHABIR PRASAD SINGH.

reversed by the Deputy Commissioner on appeal, and thereupon these suits were brought.

By the present suits the appellant, who was the plaintiff, claimed against each of his uncles possession of the villages allotted to him, alleging (1) that the rent of the villages greatly exceeded the allowances to which the respondents were entitled under the will, and that the allotments and subsequent mutation of names had been obtained by the undue influence of Mahabir; and (2) that the transfer of the villages was void, as not having been made by registered deed. The Subordinate Judge, by whom the cases were heard, held that no registered deed was necessary, but that there had been undue influence, and accordingly decreed the plaintiff's claims for possession. On appeal to the Judicial Commissioner's Court, the finding as to undue influence was reversed and the three suits were dismissed. Thereupon this appeal was brought.

Their Lordships are satisfied that the plea of undue influence cannot be sustained. The appellant, at the time when he allotted the villages as maintenance to the respondents, was 23 years of age, was a man of some intelligence, and had for some years had the active management of his estates. The rental of the villages at the time of the trial somewhat exceeded the maintenance allowances fixed by the will; but it was not proved that there was any substantial excess at the date of allotment, and it would not have been practicable to find villages producing the exact sums prescribed. It is admitted that the management of the estates by Mahabir from 1896 to 1908 was efficient and honest; and it is stated by the Judicial Commissioners that counsel for the appellant admitted before them that there was no trickery and no deceit, and that all was honesty and loyalty up to the time of Mahabir's unfortunate outbreak on the 20th of October, 1912. The charge of undue influence completely breaks down.

The contention based on the absence of a registered deed depends on section 16 of the Oudh Estates Act. This section, as amended, is as follows:—

"No transfer otherwise than by gift of any estate or of any portion thereof or of any interest therein, made by a taluqdar or grantee, or by his

heir or legatee, or by a transferee mentioned in section 14 or by his heir or legatee, under the provisions of this Act, shall be valid unless made by a registered instrument signed by the transferor and attested by two or more witnesses."

By section 2 of the Act "transfer" is defined as meaning an alienation *inter vivos*. It was held both by the Subordinate Judge and by the appellate court that section 16 had no application to this case, the title of the respondents depending on the will, which was duly registered under section 13 of the Act; and the Judicial Commissioners gave the following reasons for their conclusion:—

"We are of opinion that this section has no application. Lal Jagdish Bahadur Singh received the estate under a will which admittedly created a charge upon the estate: the will ordered that in the event of separation, certain complete villages and portions of land were to be given to the three uncles of the legatee, and that they were to receive such villages with a heritable and non-transferable right, in lieu of their maintenance. Had the plaintiff respondent proved dishonest and declined to make any allotment such as the will provided, the appellants could have sued to enforce compliance with the provisions of the will; and their suits would have been based, not on any title conferred, or promised to be conferred, by the respondent, but upon a title arising out of the will. In promptly and honourably carrying out the provisions of the will of his great-grandfather, the respondent was merely recognizing the existing title of the others, and not conferring a new distinct title upon them; while those others, in accepting possession of their respective estates, were relinquishing, for that consideration, the charge which existed in their favour upon the taluqa as a whole. The true character of the transaction indeed was an arrangement between the various beneficiaries under the will, an arrangement which it is the duty of the courts to uphold and give full effect to."

In their Lordships' opinion this is the true view of the transaction. The respondents' right to maintenance out of the estate was conferred by the will, which imposed on the taluqdar the duty of selecting the particular villages out of which the maintenance should be received. In making this selection the taluqdar imposed no additional burden on the estate, but limited and defined in accordance with the will the burden imposed by that instrument. The selection, once made and accepted, could not be disturbed either by the taluqdar or by the *guzara*-holders; and if it had been necessary to confirm it by a registered and attested instrument, it would have been the duty of the taluqdar to furnish such confirmation. But in their Lordships' opinion

1920

LAL JAGDISH BAHADUR SINGH v. MAHABIR PRASAD SINGH.

no such instrument was required, and the provisions of the will followed by the appropriation of villages and delivery of possession vested in the *guzara*-holders a good and sufficient title. The appellant has certainly no equitable claim to relief; indeed it would be most inequitable if, after making the appropriation, and delivering possession and collecting rent upon the basis of the appropriation so made, he were permitted to repudiate the transaction and recover possession of the allotted villages. This contention, therefore, also fails.

Their Lordships will accordingly humbly advise His Majesty that these appeals fail, and should be dismissed with costs.

J. V. W. *Appeals dismissed.*

Solicitors for the appellant: *Barrow, Rogers & Nevill.*

Solicitors for the respondents: *T. L. Wilson & Co.*

APPELLATE CIVIL.

Before Mr. Justice Piggott and Mr. Justice Walsh.

KAMPA DEVI (DEFENDANT) *v.* KISHORI LAL (PLAINTIFF) AND JAGANNATH AND OTHERS (DEFENDANTS)*.

1920
March, 23.

Act No. XXVI of 1917 *(Transfer of Property (Validating) Act), section* 3, *proviso (3)—Review of judgment—Judgment reviewed that of appellate court—"Former court."*

Where action is taken by an appellate court on an application for review presented in accordance with the provisions of Act No. XXVI of 1917, and an appeal which had been dismissed is restored, the "former court" mentioned in proviso (3) to the section is not the court of first instance but the appellate court.

THE plaintiff in this case sued as assignee of a simple mortgage executed on the 28th of October, 1910, and asked for a decree for sale of the mortgaged property. The court of first instance found that the mortgage-deed sued on had not been properly attested, and therefore refused to grant a decree for sale; but it gave the plaintiff a simple money decree for the amount of his claim. The plaintiff appealed to the District Judge, again asking for a decree for sale of the mortgaged

* Second Appeal No. 940 of 1918, from a decree of E. R. Neave, District Judge of Meerut, dated the 12th of June, 1918, modifying a decree of Gopal Das Mukerji, Additional Subordinate Judge of Meerut, dated the 16th of May, 1914.