APPELLATE CIVIL.

Before Mr. Justice Scott-Smith and Mr. Justice Fforde.

SRI RAM (PLAINTIFF) Appellant,

versus

NAND KISHORE AND NAVIN CHANDRA (DEFENDANTS) Respondents.

1924

April 16.

Civil Appeal No. 78 of 1921.

Parda Nashin *lady—Suit by her to set aside her own gift in favour of her nephew—on ground of weakness of intellect and undue influence*—Onus probandi.

Mst. B. D., the original plaintiff in this case, sued to have a deed of gift made by herself two years previously in favour of the minor son of her younger brother set aside on the ground of weakness of intellect and undue influence. By the gift she disposed of a large portion of her property. During the pendency of the suit *Mst.* B. D. died and S. R., the grandson of her deceased husband, was substituted in her stead. The trial Court fixed one issue, *viz.*, " whether the gift of the property in suit was made under undue influence and is revocable " and placed the *onus probandi* on the plaintiff. In appeal it was urged that the *onus* of proving that the gift was made voluntarily and with a full knowledge and appreciation of her act and all its consequences was on the defendants.

Held, that the donor in this case could not be called a *parda nashin* in the real sense of the term. She was accustomed to transact business, she was capable of carrying out monetary transactions and had no hesitation in appearing even before comparative strangers. The rule relied on by the plaintiff and laid down by the Privy Council in *Kamawati* v. *Digbi Jai Singh* (1), per Lord Shaw, was therefore not applicable to the case.

Held also, that even if the *onus* had been wrongly placed on the plaintiff the evidence produced by the defendants clearly proved that the donor was perfectly aware of the nature and consequences of her act when she executed the

(1) (1921) I. L. R. 43 All. 525, 530 (P. C.).

1924

SRI RAM
v.
NAND KISHORE.

deed in question, that the act was in no way an improvident one, and that it was a gift made on her own initiative and without any pressure being exercised by any person whatsoever.

First appeal from the decree of Diwan *Som Nath, Senior Subordinate Judge, Delhi, dated the 4th October 1920, dismissing the suit.*

DALIP SINGH, N. C. PANDIT and BADRI DAS, for appellant.

TEK CHAND, HAR GOPAL and MEHR CHAND, MAHAJAN, for Respondents.

The judgment of the Court was delivered by—

FFORDE J.—This is an appeal from a judgment and decree of the Senior Subordinate Judge of Delhi dismissing the plaintiff's suit which was brought to set aside a voluntary deed of gift executed by one *Mussammat* Bhagwan Devi in favour of the defendant Prem Nath, a minor son of her younger brother Madho Ram. The deed, which was executed on the 6th of September 1915, is a clear and simple document, the material parts of which are as follows :—

" The *kothi* is owned and possessed by me, the executant, without the partnership of anybody else. It has been up till now in my proprietary possession and occupation. All rights in respect of alienations of every description of the *kothi* are vested in me under the deed of gift, dated the 21st August 1893, which was registered on the same date, and which was executed by *Rai Sahib Lala* Narain Das in my favour. I, while in the enjoyment of sound health and in possession of right intellectual powers and while in the enjoyment of full senses, and without coercion and compulsion on the part of anybody else, have of my own accord gifted and given away the property having the boundaries given above, valued at Rs. 30,000, along with all internal and external

rights, to Prem Nath, minor son of *Lala* Madho Ram (deceased), caste *Arora*, now residing at Basti Jadid, Lahori Gate, near the city wall, my nephew, who at present lives with me. His father was brought up by me and his marriage ceremony was also performed by me, and his wife too lives with me and renders me services as son's wife. I am responsible for the bringing up of the said minor, looking after him, providing him with food and clothing, and imparting him education and meeting all his other expenses. As the donee is young and minor, his mother *Mussammat* Lachhmi is his natural guardian. I have taken the gifted property out of my proprietary possession and made over the same to the guardian of the donee, along with the previous title-deed, and thus put the said donee in possession of the property. Now I, the donor myself during my life-time and after my death, my grandsons and great-grandsons and their near and remote relatives, and also my representatives and successors, have been left no claim and right in respect of the property gifted to the donee, nor will they have any in future.

"The donee as owner shall have all the rights of construction and improvement, and of location and removal of tenants, and also in regard to all sorts of alienations, such as sale, mortgage, etc., which were vested in me, the donor, without interference by anybody. If in future any co-partner or co-sharer or any other person brings forward any claim in respect of the gifted property against the donee, his claim shall be false and unfounded, by virtue of this deed of gift.

"*Mussammat* Lachhmi, mother of donee, minor, has accepted of her own accord to take over the gifted property for him. The contract of gift has been made between the parties ; and there is now no condition as

1924

SRI RAM
v.
NAND KISHORE.

to its revocation. Hence I have written these few words in the form of a deed of absolute gift, so that it may serve as an authority and be of use in time of need."

The suit to set aside the deed was instituted on the 20th of October 1917 by the donor herself. In February 1919 the plaintiff died, and by an order, dated the 22nd of July 1919, the present plaintiff, *Rai Sahib Lala* Sri Ram Poplai, was substituted in her stead. This plaintiff, who is the appellant in the present appeal, is the grandson of *Rai Sahib* Narain Das, through his first wife, his second wife being *Mussammat* Bhagwan Devi, who acquired the property in dispute by gift from her husband. The grounds upon which the deed is impugned are that the donor at the time of executing the document was an ignorant and *pardah nashin* lady, 63 years of age, "suffering from weak intellect on account of facial paralysis;" that the donor in making the gift was acting under the influence of *Mussammat* Lachhmi, the mother of the donee; that the gift was the result of undue pressure exercised by *Mussammat* Lachhmi; and that the donor when making it did not consider the future effect of this disposition of that portion of her property. It may be mentioned at the outset that the house in question was not the sole property of *Mussammat* Bhagwan Devi, as she owned, in addition, the house in which she lived, a portion of which was let and produced a certain rental.

The suit was commenced before Mr. Tapp, the former Senior Subordinate Judge of Delhi, who framed the issue between the parties as follows:—

> "Whether the gift of the property in suit was made under undue influence and is revocable?"

The *onus* of proving the issue was placed upon the plaintiff. Plaintiff's counsel objected to the *onus* being so placed and asked that it be laid on the defendants. This application was refused. Counsel for the appellant has strongly urged that the *onus* was wrongly placed as the person bringing the suit was a *pardah nashin* lady, and that when as such she comes into Court to set aside a deed whereby she has dispossessed herself of a considerable portion of her property, the *onus* lies upon the person claiming under that deed of proving in the most complete manner that the lady in parting with the property did so voluntarily and with a full knowledge and appreciation of her act and all its consequences.

There is no doubt that when a person relies upon a deed of gift executed by a *pardah nashin* lady, who is such in the true meaning of the term, that party must prove not only that the transaction is free from any pressure exercised to procure the making of the gift, but also that the donor thoroughly understood the nature and the effect of her action. The rule has been repeated as recently as 1921 in a judgment of the Privy Council in *Kamawati* v. *Digbi Jai Singh* (1). In that case the deed was executed by a *pardah nashin* lady practically without any consideration, whereby she parted with her entire property in favour of a donee who, or whose representatives, tendered to her the prepared document and obtained her signature to it within the *pardah*. The following observations of Lord Shaw, who delivered the judgment of the Board, appear at page 530 :—

" It is the established law of India in these circumstances that the strongest and most satisfactory

(1) (1921) I. L. R. 43 All. 525, 530 (P. C.).

1924

SRI RAM
v.
NAND KISHORE.

proof ought to be given by the person who claims under a sale or gift from them that the transaction was a real and *bonâ fide* one, and fully understood by the lady whose property is dealt with. The cases upon the subject were discussed and the law as thus cited was repeated in *Sajjad Hussain* v. *Wazir Ali Khan* (1) in these terms :''

" When, however, the law is that the lady must fully understand the transaction, this is but a secondary way of saying that it is the obligation of the donee in any transaction proceeding from her to see that she does so understand it. The relations of parties demand that this duty be performed, and when Courts of law declare that the *onus* rests upon the donee of showing that he did so, that, of course, is founded upon the fundamental fact that it was his duty to do it. If accordingly this obligation thus arising out of the relations of the parties be not fulfilled, the case for rescission and consequent remedy is clear.''

In the present case the circumstances are very different from those which obtained in that case. Here the donor though described as a *pardah* lady of rank, did not observe *pardah* within the strict meaning of the term. The Court below has held—and having examined the evidence I entirely agree with the finding—that one cannot call her a *pardah nashin* in the real sense of the term. She was accustomed to transact business, she was capable of carrying out monetary transactions and it is clear, as the learned Senior Subordinate Judge has found, that she had no hesitation in appearing even before comparative strangers. But even if it be assumed that *Mussammat* Bhagwan Devi was a *pardah nashin* lady within the meaning of the rule laid down by their Lordships of

(1) (1912) I. L. R. 34 All. 455 (P. C.).

1924

SRI RAM
v.
NAND KISHORE.

the Privy Council, her case has in no way suffered by reason of the *onus* of proof having been laid upon her. The case was not decided against her upon her failure to discharge the *onus*, but was decided upon the affirmative proof produced by the defendants. Their evidence shows that this lady thoroughly understood what she was doing when she gifted this property to her nephew. Although she does not appear to have had any independent advice in the transaction, it is clear that she would not have acted otherwise even if she had been represented by an independent legal adviser. The deed was executed before the Sub-Registrar and was witnessed by two medical men, Dr. A. K. Bose, L.M.S., a private practitioner of Delhi, and Major Corrie of the Indian Medical Service. Major Corrie was in England when the case was tried and was not able to appear as a witness, but Dr. Bose was called by the defendants and proved that though the lady was suffering from paralysis of the right side and could not articulate all her words properly, her mental faculties were unimpaired and she was quite capable of devising her property. This witness also stated that the Sub-Registrar read over and explained the deed to the lady and that she acknowledged the contents to be true. It must be borne in mind that the gift was a natural one. *Mussammat* Bhagwan Devi was strongly attached to this nephew of hers. The boy's father had lived with *Mussammat* Bhagwan Devi for a number of years and had died in her house, and after his death the boy's mother *Mussammat* Lachhmi and the boy lived with her as members of her family. There is no doubt that *Mussammat* Bhagwan Devi was devoted to her deceased brother and to his children. When the boy's mother died at Muttra, where she had gone for the performance of the *janeo* cere-

1924

SRI RAM
v.
NAND KISHORE.

mony of the boy, *Mussammat* Bhagwan Devi went there herself and brought the child back to her house. She had no children of her own and there is no doubt that she looked upon this boy as though he were her own son.

It has not been alleged that *Mussammat* Bhagwan Devi was left in an impecunious state as the result of depriving herself of this portion of her property. A number of witnesses were called by the plaintiff, but except the statement of one witness that she pawned certain ornaments for the sum of Rs. 1,450 some 4 or 4½ years prior to July 1920, there is no evidence of any value that she was in any straitened circumstances up to the time of her death. On the whole of the evidence I am in entire agreement with the Senior Subordinate Judge that *Mussammat* Bhagwan Devi was perfectly aware of the nature and consequences of her act when she executed the deed in question, that the act was in no way an improvident one, and that it was a gift made on her own initiative and without any pressure being exercised by any person whatsoever.

I would accordingly dismiss the appeal with costs.

SCOTT-SMITH J.—I concur.

A. N. C.

Appeal dismissed.