

PRIVY COUNCIL

Mt. Bilas Kunwar.

Vs.

Desraj Ranjit Singh and others.

P.C.A No. 32 of 1912

(Viscount Haldane, CJ , Lord Shaw, Sir George Farwell, Sir John Edge and Mr. Ameer Ali. J)

13.7.1915

JUDGMENT

Sir George Farwell J.

1. This is an appeal from a judgment and decree, dated the 10th of May, 1910, of the High Court at Allahabad, which reversed a judgment and decree, dated the 26th of August, 1908, of the Judge of the Small Cause Court of Allahabad exercising the powers of a Subordinate Judge.

2. Rai Bisheshar Baksh Singh was a *taluqdar* of Oudh; he was a man of some wealth, a Rajput of good position; he had two Rajput wives but no son; he had, however, one daughter by one of the wives. He had also a Muhammadan mistress named Jagmag Bibi, by whom he had two sons, and for whom he had made provision on a fairly liberal scale, and had given full possession thereof in 1876 and in 1888. On the 9th of June, 1887, the *taluqdar* purchased for Rs. 9,000 the bungalow in dispute in this action; he raised the purchase money by a mortgage on his own property and paid for it, and had the sole use and enjoyment of it for himself and his wives during his own life, but the deed of sale was made out and registered in Jagmag's name. The *taluqdar* spent money on the house, built a well and walls and kept a gardener in occupation, he and his wives lived there, and the mother of one of his wives lived and died there. His wives used the bungalow by his permission for "*Kalabbas*," i.e., to live at the bank of the Ganges for religious purposes for a month at a time; the purchase seems to have been made for the purposes of the *Kalabbas*. Jagmag Bibi was never in the bungalow during this period; she would of course, as a Muhammadan mistress, have no part or lot in the Hindu religious observances of Rajput wives, and it is inconceivable that she

could have associated in any way in the bungalow with them.

3. The bungalow was useless to her for any personal use, and it was wholly inappropriate as a provision for her if the *taluqdar* ever had any intention or idea of making a further provision for her; the net income was very small in some years the out-goings exceeded the income. There is no evidence of any intention to give the bungalow to Jagmag as a provision for her or otherwise beyond the bare fact of the registration in her name; it is not clear how or when she got possession of the title-deed; it may be that it was in the *taluqdar's* possession at his death, and at some subsequent period. As the deed was made out in her name there is no importance in this. Down to the *taluqdar's* death the natural inference is that the purchase was a *benami* transaction; a dealing common to Hindus and Muhammadans alike, and much in use in India; it is quite unobjectionable and has a curious resemblance to the doctrine of our English law that the trust of the legal estate results to the man who pays the purchase money, and this again follows the analogy of our Common Law, that where a reoffer is made without consideration the use results to the reoffer. The exception in our law by way of advancement in favour of wife or child does not apply in *India Gopeekrist Grosain v. Gungapersaud Gosain*¹ but the relationship is a circumstance which is taken into consideration in India in determining whether the transaction is *benami* or not. The general rule in India in the absence of all other relevant circumstances is thus stated by Lord Campbell in *Dhurm Das Pandey v. Mt. Shama Soonadri Dibiah*². "The criterion in these cases in India is to consider from what source the money comes with which the purchase money is paid."

4. On the 31st of August, 1890, the *taluqdar* died, and by an agreement of the 21st of March, 1894, between his two widows the possession and management on behalf of both was given to one of them, viz., Thakurain Balraj Kunwar, and she has throughout managed the property in question. Whether any acts or omissions by any of the parties after the death of the *taluqdar* could affect the nature of the *benami* transaction as it stood at his death it is unnecessary to consider, for their Lordships are of opinion that nothing has been given in evidence which could have any effect at all on the transactions as *benami*. The evidence given by Jagmag is quite untrustworthy, and she has not even called her sons whom she purports to vouch as actors on her behalf: the Trial Judge does not place any confidence in Roshan Lal's evidence, and his conduct certainly is open to comment. On the facts as accepted by their Lordships as the result of the evidence, all rates, rents and taxes and repairs and the ground rent of the bungalow have been paid by the Thakurain. She has had possession of the premises

by her servant Bhairon, and has let them to various tenants from 1891 down to the commencement of this action, the last tenant being Dr. Ranjit Singh, to whom the plaintiff let and gave possession in 1896, and to whom also she gave notice to quit on the 13th of October, 1905.

5. On these facts their Lordships are of opinion that the transaction was and remains throughout *benami*. They are unable to agree with the opinion expressed by the High Court; they find no ground on which to treat a purchase by the *taluqdar* of such a property as this bungalow in the name of his Muhammadan mistress in a manner differing from that on which a similar purchase by a Hindu in the name of a complete stranger would be treated, nor is there any ground for asserting that the probabilities of the case are in favour of an intention by the *taluqdar* to benefit his mistress; for the reasons stated above the exact contrary appears to their Lordships to be the case. The High Court Judges "attach great significance" to the non-production of the books showing the accounts of the general estate, and appear to draw an inference therefrom adverse to the plaintiff's claim; any such inference is, in their Lordships' opinion, unwarranted. These books do not necessarily form any part of the plaintiff's case; it is, of course, possible that some entries might have appeared therein relating to the bungalow. But it is open to a litigant to refrain from producing any documents that he considers irrelevant; if the other litigant is dissatisfied, it is for him to apply for an affidavit of documents, and he can obtain inspection and production of all that appear to him in such affidavit to be relevant and proper. If he fails so to do, neither he nor the court at his suggestion is entitled to draw any inference as to the contents of any such documents. There is no ground for any inference such as is made in the High Court that the books, if produced, would have shown rent credited to Jagmag or set off against some claim against her. They related to a different property, and the possibility of entries relating to the bungalow therein is very remote, but even if it had been greater, the court was not entitled to draw any such inferences. It is for the litigant who desires to rely on the contents of documents to put them in evidence in the usual and proper way; if he fails to do so no inference in his favour can be drawn as to the contents thereof.

6. The other point in the case is one of *estoppel*. The property was let by the plaintiff to defendant Ranjit Singh; he, was let into possession by the plaintiff's gardener Bhairon, on her behalf and by her direction, and he regularly paid rent to her and applied to her do all the necessary repairs; he has never given up possession to her although he duly received notice to quit, and he has denied her title. Section 116 of the

Indian Evidence Act is perfectly clear on the point, and rests on the principle well established by many English cases, that a tenant who has been let into possession cannot deny his landlord's title, however defective it may be, so long as he has not openly restored possession by surrender to his landlord. The Subordinate Judge was clearly right on this point. The High Court appears to have been under some misapprehension, and counsel for the respondents has not attempted to support their judgment on this point. Their Lordships are of opinion, and will humbly advise His Majesty, that the decree of the High Court should be reversed and that of the Trial Judge should be restored, and that the respondents should pay all the costs here and below.

Appeal allowed.

Cases Referred.

1. [1854] 6 M.I.A.53 : 4 W.R.46 : 1 Sar. 493(P.C.)
2. [1843] 3 M.I.A.229 : 6 W.R.43 : 1 Suther 147 : 1 Sar. 271 (P.C.)