

(1937) 11 PRI CK 0010

In the Privy Council

Case No : Privy Council Appeal No. 71 of 1935

Nawab Sikandar Begam

APPELLANT

Vs

Zulfikar Wali Khan (minor), and others

RESPONDENT

Date of Decision : 25-11-1937

Acts Referred:

Citation : (1938) AIR(PC) 38

Hon'ble Judges : George Rankin, Shadi Lal, Lord Maugham, JJ.

Advocate : Harker, Francis, T.L. Wilson and Co., Dr. Majid, A.M. Dunne, W. Wallach, Cyril Asquith, for the Appearing Parties.

Judgement

Lord Maugham

This is an appeal from a decree of the High Court at Allahabad, dated 5th December 1933, which reversed the decree of the Court of the Subordinate Judge of Bareilly, dated 30th July 1929. The plaintiff-appellant is a pardanashin lady, who at the date of the suit was, as their Lordships are given to understand, nearly 60 years old. She claimed in the suit instituted by her a declaration that a certain deed of gift dated 13th April 1928, executed by her in favour of defendant 2, was obtained through fraud; that she did not understand the contents of it; that she could not get independent advice in respect of it; that the conditions for consideration were not fulfilled; that she had no intention to execute the same, and that therefore it was null and void as against the plaintiff. The person in whose favour the deed of gift was executed, (defendant 2), was her grandson, a minor, who is now respondent 1 (commonly called Majjan), a child whom she had brought up from the age of only 10 months old on the death of his mother and on whom, according to the evidence, she had bestowed much love and affection. Defendant 1 (now deceased) was her younger son, Iftikhar Wali Khan, the guardian of the donee. The gift had been completed by delivery of possession shortly after the deed had been registered. The High Court at Allahabad in a very able judgment carefully considered the nature of the transaction embodied in the deed of gift. They examined the evidence as to the

income of the appellant, and the liabilities of her estate and as to the benefits which were to come to her under the deed of gift. It will not be necessary to mention all the figures; but it is material to state that the gift was a gift for consideration, that it is plain that the lady, who was at the date of the deed about 58 years of age, derived substantial advantages from its execution and that it was beyond doubt a reasonable document for her to enter into. It is of first importance to observe that the deed was not an improvident document which the appellant, if adequately advised, could not properly have entered into, but is one which might well be to her real advantage. There was a great deal of dispute as to the extent of her knowledge of the precise terms of the deed before it was executed and a little dispute as to what took place when three days after the execution of the deed it came in for registration in due course. Their Lordships are relieved from the necessity of going carefully through the evidence on these two points, because the whole evidence has been most admirably and carefully summarised and commented upon in the judgment of the High Court, and they think it quite unnecessary to repeat the statements and the considerations which are contained in that judgment. This curious fact however should be mentioned that when the contents of the document were read out and explained to the appellant by the Sub-Registrar, upon the occasion of the registration of the deed on 16th April 1928, the appellant stated that she admitted the execution and completion of the document, but added that the sum of Rs.300, and not Rs.250 as stated in the deed, had been agreed upon to be paid for her monthly maintenance; and she also stated that it had been agreed that, apart from that monthly amount, grain and fuel would be supplied to her "in accordance with her expenses", and she added that she accepted the gift subject to the conditions there stated. The Sub-Registrar stated upon the documents the facts which have been mentioned and the contentions made by the appellant. The thumb impression and seal of the plaintiff was affixed below this statement as required by the Sub-Registrar, and the witnesses included, it may be mentioned, Iftikhar Wali Khan, the guardian of the donee, Majjan. It seems to their Lordships that if there had been any dispute before them as to whether in these peculiar circumstances the appellant was entitled to Rs.300 and to the grain and fuel as mentioned in this note of the Sub-Registrar, rather than to the Rs.250 as mentioned in the deed of gift, it would be necessary to consider the effect of the Registration Act, particularly S.35, and also to consider certain authorities in order to ascertain the precise legal effect of such a statement as this after the execution of the deed; and their Lordships must observe that it would have been much better to have taken the more usual and regular course of re-executing the deed with the modifications which the parties had agreed to.

It so happens however that the High Court at Allahabad have decided that in the circumstances of the case the conditions added by the appellant at the time of registration were admissible in evidence and binding on the donee. In coming to this conclusion no doubt they were to some extent influenced by the fact that her signature is above the endorsement and that one of the witnesses was her son

Iftikhar Wali Khan, the guardian for the infant donee, who apparently made no protest or no effective protest as regards the statement made by the appellant. However that may be, the respondents to the present appeal do not seek to disturb the view of the High Court at Allahabad on that point and are content that it should be taken that the deed operates as if the Rs.300 were substituted for the Rs. 250 and as if the appellant was entitled to the grain and fuel which is referred to in the Sub-Registrar's record of what the appellant was claiming at the time of the registration. In these circumstances it does not seem necessary to their Lordships to express an opinion upon this part of the case.

As regards the substance of the proceedings, their Lordships are satisfied that the grounds on which the appellant seeks to have the deed of gift set aside have failed. It is true that the appellant is a pardanashin lady of considerable age and it is also true that at one time it was thought that in such a case there was a necessity for independent advice; but fortunately there are two decisions which in the view of their Lordships completely explain the law applicable to transfers by pardanashin ladies so far as the present question is concerned. Those cases are *Kali Bakhsh Singh v. Ram Gopal Singh*, (1913) 36 All 81=21 IC 985=41 IA 23=16 OC 378=12 ALJ 115 (PC) and *Farid-un-Nissa v. Mukhtar Ahmad*, (1925) 12 AIR PC 204=89 IC 649=52 IA 342=28 OC 338=47 All 703 (PC), where there is an illuminating judgment delivered by Lord Sumner, in which he dealt with a case where an illiterate pardanashin lady had executed a deed without independent legal advice. In the present case it was for the defendants in the action to discharge the onus of showing that the plaintiff really understood and intended to execute the deed of gift but it was not necessary to prove independent advice. As regards the other various contentions put forward by the appellant and urged before them with equal ability and conciseness by Mr. Asquith, their Lordships are satisfied with the reasons given and the analysis of the facts contained in the judgment of the High Court; and they have therefore come to the conclusion that the present appeal fails and must be dismissed with costs. They will humbly advise His Majesty accordingly.