*Judgement of the Lords of the Judicial Committee of the Privy Council on the Consolidated Appeals of Baboo Situl Pursha*d v. *Baboo Luchmi Pershad Singh and others, from the High Court of Judicature at Fort William, in Bengal; delivered, June 29th*, 1883.

Present:

LORD WATSON.
SIR BARNES PEACOCK.
SIR ROBERT P. COLLIER.
SIR RICHARD COUCH.
SIR ARTHUR HOBHOUSE.

THE sole question to be decided in both these Appeals is whether the Plaintiff, in the first Appeal as assignee, in the second Appeal as execution creditor, of one Chhuck Narain Singh, derived from Chhuck Narain a right to redeem certain villages which he alleged to have been mortgaged by Chhuck Narain. On the part of the Respondents it is not disputed that if he is correct in his interpretation of these deeds, and the villages were mortgaged, he has the right which he claims. But it is contended that the deeds in question did not create a mortgage, but were a sale of the property with a provision for its re-purchase on certain conditions personal to the mortgagor.

In order to determine this question it is necessary to consider the circumstances under which the two documents which are relied upon, namely a pottah and an Ikrarnama of the 15th January 1864, were executed, as well as to examine the documents themselves.

The circumstances were shortly these: Ram Churn was the eldest of three brothers, Chhuck

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Narain being a half-brother of the other two. Chhuck Narain purchased a 14 annas share of some 52 villages in a zemindari in the joint names of himself and his two brothers. It was intended that he should have 10 out of the 14 annas, and that each of his brothers should have two annas. He paid the greater part of the purchase money; the brothers paid a comparatively small part of it, and they were indebted to him. In order to recover that debt, amounting with interest to upwards of Rs. 40,000, he brought an action, and obtained judgements against both of them for something more than Rs. 20,000. These were the transactions between the brothers at the time of the deeds being entered into.

On the 15th January 1864 a pottah was entered into by Chhuck Narain Singh, in which he purports to grant in mokurruri on perpetual tenure, to his brother Ram Churn, his two annas share in the 52 villages, at an annual rental of Rs. 497. The deed contains these recitals. It speaks of the sum of Rs. 30,005 as the consideration or peshkas nuzurana money, "out of which," Chhuck Narain says, "I have taken Rs. 10,000 in cash "for payment of the debt due to Baboo Ram "Churn Lal Mahajun," —that is another Ram Churn,—"and the balance, Co.'s Rs. 20,005, was "paid on account of the decretal money, prin- "cipal with interest, and costs incurred in the "Ziliah Court and the Sudder Court, as con- "tained in the decision of the Principal Sudder "Amin of Zillah Bhagulpore, dated the "10th September 1861, which was confirmed by "the decision of the High Court of Calcutta, "dated 10th September 1863, due to Baboo "Ram Churn Singh, Plaintiff, decree holder, "from me, the declarant, Defendant, judgement "debtor, after deduction of Rs. 1,323 remitted "out of the decretal money due to the said decree "holder, and of the amount of costs incurred

" in the Zillah Court, and also after deduction " of one half of the decretal money due from " Baboo Chundi Pershad Singh, second Defen- " dant ; and whereas a deed of acquittance of " this date, with a receipt stamp affixed thereto, " has been obtained by me from the said decree " holder, I, the declarant, have from the begin- " ning of 1271 Fusli, executed this pottah of " perpetual mokurruri lease," and so on. The pottah, therefore, recites that this mokurruri lease was given upon an absolute acquittance of the debt, and not as a security for its payment.

The Ikrarnama of the same date must now be taken to be in these terms (there has been a dispute about the terms, which it is not necessary now to refer to). It was stipulated between the contracting parties that when Baboo Chhuck Narain Singh, or his heirs, paid off the said nuzurana money of Rs. 30,000, without interest, from their own pocket, without taking money from any other person, to Baboo Ram Churn Singh and his heirs, then Baboo Ram Churn Singh, or his heirs, would, without demanding interest, return the said pottah or perpetual lease to the said Baboo Chhuck Narain Singh, and Chhuck Narain Singh should have no claim in respect of the mesne profits for the period of the mokurridar's possession.

Now the question is whether, as contended by the Appellants, these documents, though they purport on the face of them to be a sale with a power of re-purchase, really amount to a mortgage, or whether, as contended by the Respondents, the real intention of the parties was that which appears upon the face of them; namely, that there should be a sale, that the debt should be acquitted, and that there should be a power of re-purchase under certain conditions personal to Chhuck Narain.

Both Courts have found in favour of the contention of the Respondents. Such finding, in the first place, is entirely consistent with the terms of both documents. The opposite finding would not be consistent with the terms of either, certainly not with the terms of the pottah, which speaks of the debt having been acquitted and discharged. To hold that it was not acquitted and discharged, but that these documents were really a security for it, would be to contradict the terms of the instrument.

Then again, looking at the surrounding circumstances, among other things, at the value of the property, which appears to have been fairly ascertained, and at the relations of the parties, their Lordships are of opinion that the Courts have come to the right conclusion, that this transaction is in fact what it purported to be, and there is no sufficient ground for holding it to be what it did not purport to be, namely, a mortgage.

Under these circumstances their Lordships will humbly advise Her Majesty that these Appeals be dismissed and the judgement be affirmed. The Appellant must pay the costs of the Appeals; but as they have been consolidated, there will be only one set of costs.