Judgment of the Lords of the Judicial Committee of the Privy Council on the two consolidated Appeals of Lallu Sahi v. *Mahant Rajbans Bharthi and another, from the High Court of Judicature for the North-Western Provinces, Allahabad (P.C. Appeals Nos.* 110 *and* 111 *of* 1911 *; Allahabad Appeals Nos.* 11 *and* 12 *of* 1910), *delivered the 5th December* 1912.

PRESENT AT THE HEARING :

LORD MACNAGHTEN.
LORD MOULTON.
SIR JOHN EDGE.
MR. AMEER ALI.

[DELIVERED BY SIR JOHN EDGE.]

The suit in which these two consolidated Appeals have arisen was brought by Babu Lallu Sahi, the Appellant here, in the Court of the Additional Subordinate Judge of Gorakhpur, against Mahant Rajbans Bharthi and Babu Thakur Singh, who are the Respondents to these Appeals. The suit was brought upon two hypothecation bonds, dated respectively the 23rd March 1900 and the 27th April 1901, which were made by the Defendant Mahant Rajbans Bharthi. The first bond was made in favour of Babu Rajdeo Singh, deceased, who, in fact, was in that transaction *benamidar* for the Plaintiff, and was the father of the Defendant Babu Thakur Singh, a *pro formâ* Defendant against whom no relief was sought. The second bond

was made in favour of the Plaintiff. The suit was a suit for sale under Section 88 of the Transfer of Property Act, of the immovable property mentioned in the bonds. The consideration for the bonds was alleged in the plaint to have been old and present debts. In his written statement the Defendant, Rajbans Bharthi, denied that any consideration had been given or received for the bonds, and stated his version of the transaction between him and the Plaintiff which briefly was that he, Rajbans Bharthi, being involved in a dispute and litigation with one, Karya Bharthi, relating to property appertaining to a *math*, it was agreed between the Plaintiff and him, Rajbans Bharthi, that in consideration of the Plaintiff defraying one-third of the expenses in the case he should put the Plaintiff in possession of an 8 annas share in Mauza Sirsia Gotha, and in the event of Rajbans Bharthi succeeding in the litigation he should execute a sale deed of the 8 annas share in favour of Babu Gobardhan Sahi, the Plaintiff's brother. In his written statement Rajbans Bharthi further alleged that under a perpetual lease of the 31st December 1898 he put the Plaintiff in possession of the 8 annas share in Mauza Sirsia Gotha, and that subsequently, during the pendency of the litigation, the Plaintiff, without any consideration, obtained from him four bonds, of which two are the bonds in suit.

At the trial before the Additional Subordinate Judge, the Plaintiff gave evidence. His case was that the bonds had been given as security for the repayment of money which he alleged that he had advanced to or on behalf of Rajbans Bharthi. He stated that the Defendant had borrowed Rs. 6,200 from him, but he could not remember the occasions on which he gave the money; he had no documentary evidence to show what sums he had advanced to or on behalf of

Rajbans Bharthi; he produced no account-book; he had no witness to prove that he had advanced any money to or on behalf of Rajbans Bharthi; and he swore that no agreement had been made between them for the execution of any sale deed. It was not proved what the expenses of the litigation amounted to. No money had passed on the registration of the bonds. On the other hand, it was proved by witnesses, whose evidence their Lordships see no reason to doubt, that they were present when it was agreed that the Plaintiff should defray one-third of the expenses of the litigation, and that a sale deed of the 8 annas share in Mauza Sirsia Gotha should be executed in his favour by Rajbans Bharthi, when the case was concluded. It was also proved that Rajbans Bharthi agreed to execute a lease of the 8 annas share. Rajbans Bharthi also proved the circumstances under which he made the bonds in suit; that there was no consideration for them; that the bonds were given by him at the request of the Plaintiff so that they might be used in case he should not execute the sale deed; and he swore that he had always been willing to execute the sale deed, but the Plaintiff and his brother Gobardhan were not willing that the sale deed should be executed, and he was helpless.

The Additional Subordinate Judge did not believe the Plaintiff's evidence, but finding that the Plaintiff had paid part of the expenses of the litigation in which Rajbans Bharthi had been engaged, the Additional Subordinate Judge gave the Plaintiff a decree upon the bonds for part of his claim, and as to the remainder of his claim dismissed the suit.

From that decree the Plaintiff and Rajbans Bharthi, respectively, appealed to the High Court at Allahabad. On the hearing of the

appeals the High Court disbelieved the Plaintiff's evidence, and accepting as true the evidence which had been given on behalf of Rajbans Bharthi, dismissed the Plaintiff's Appeal, and allowing the Appeal of Rajbans Bharthi, dismissed the suit.

Their Lordships do not believe the evidence of the Plaintiff; they find that the Plaintiff and the Defendant Rajbans Bharthi agreed that in consideration of the Plaintiff defraying one-third of the expenses of the litigation between the Defendant Rajbans Bharthi and Karya Bharthi the Defendant should grant a lease to the Plaintiff's brother Gobardhan Sahi of an 8 annas share in Mauza Sirsia Gotha, and should when that litigation was concluded execute a sale deed of that share to the Plaintiff, and that under that agreement the Plaintiff paid such moneys as were paid or advanced by him. Their Lordships find that the bonds in suit were subsequently to that agreement and before the termination of the litigation given to be used should the Defendant Rajbans Bharthi refuse to execute the sale deed. Rajbans Bharthi has always been ready to carry out the agreement on his part, and their Lordships agree with the High Court that no consideration passed for the bonds, and that securities in respect of which there was no consideration ought not to be made, as was done by the Additional Subordinate Judge, securities for the expenses which were defrayed by the Plaintiff in the litigation between Rajbans Bharthi and Karya Bharthi.

Their Lordships will humbly advise His Majesty that the consolidated appeals should be dismissed and the decrees of the High Court be affirmed. The Appellant must pay the costs of these Appeals.

In the Privy Council.

LALLU SAHI

v.

MAHANT RAJBANS BHARTHI AND ANOTHER.

DELIVERED BY SIR JOHN EDGE.

LONDON:
PRINTED BY EYRE AND SPOTTISWOODE, LTD.
PRINTERS TO THE KING'S MOST EXCELLENT MAJESTY.

1912.