

PRIVY COUNCIL

Hem Chandra Roy Chaudhury

Vs.

Suradhani Debya Chaudhurani

P.C.A.No.80 of 1938

(Lord Thankerton, Lord Romer, Sir George Rankin, Lord Justice Luxmoore and Mr.Jayakar JJ.)

23.05.1940

JUDGMENT

SIR GEORGE RANKIN J.

1. The appellant, *Hem Chandra Roy Chaudhury*, was defendant 1 in a suit brought by respondent 1 in the Court of the Subordinate Judge at Mymensingh to enforce a mortgage. The suit was filed on 6th March 1931, and the mortgage deed (Ex. I) was dated 18th August 1918. The property mortgaged thereby was a taluk (Gangaram Rai) numbered 237 in the books of the Mymensingh Collectorate and comprising ten mouzas; also another taluk (Sambhu Chandra Roy) numbered 239 in the same Collectorate and comprising seven mouzas. The mortgage deed had been executed in favour of the plaintiff by two persons as mortgagors- the appellant and his paternal grandmother, an old lady whose name was Sm. Nabin Kishore Chaudhurani.

2. The appellant had inherited the mortgaged properties, together with other properties, from his father at some date before 1914 while he was yet a minor. The father's will, made in 1391, states that Nabin Kishore, the testator's adoptive mother, had managed and administered his zamindari and other properties during his minority and was efficient in doing all business relating thereto. The appellant in 1913, on attaining majority, executed a trust deed (3rd Falgoon 1320 B. S.) vesting all his properties in her so that she might continue to manage them. Between 1914 and 1917 they had jointly borrowed considerable sums from the Maharaja of Mymensingh on four mortgage deeds. The first of these mortgages dated in 1914 was paid off by money raised from one Anath Bandhu Guha by means of a mortgage (Ex.S) entered into on 18th March 1918, a few months before the mortgage in suit. The other three

mortgages were paid off by means of the mortgage in suit which was for the sum of Rs. 1,20,000, Rs. 1,00,423-4-6 due on the three mortgages already mentioned, Rs. 4000 duo on a note of hand to the plaintiff (respondent 1) and Rs. 15,576-11-6 cash advanced. The appellant and his grandmother in 1920 and 1923 had borrowed further sums from Anath Bandhu Guha under two mortgage deeds Exs.R and T.

3. The properties comprised in the respective mortgages to Anath Bandhu Guha were as follows: His prior mortgage of 18th March 1918 (Ex. S) comprised four out of the seventeen mouzas mortgaged to the plaintiff. His subsequent mortgage of 1920 (Ex. R) comprised the same seventeen mouzas and his last mortgage of 1923 (Ex. T) comprised in addition to these seventeen mouzas a house and lands known as Bailor House. Anath had died before suit and the present respondents 2 to 5 were impleaded as his representatives. They were defendants 3 to 6 and may be referred to as the Guha defendants.

4. Nabin Kishore was impleaded as defendant 2 in the suit. She died on 8th September 1932, before the trial and the appellant was substituted in her place on 13th September 1932. The time originally allowed by the Subordinate Judge to the defendants for filing written statements was extended by him until 4th June 1931, on which day the Guha defendants put in a written statement. The appellant was given farther time until the 25th. On that day he asked for still more time. The Subordinate Judge gave him two days only, remarking that he had had two and a half months already; also that he had no right to look into the Guha defendants' written statement before filing his own. (This may have meant no more than that he should file his own written statement independently in the first instance.) On 29th June, Nabin Kishore filed her written statement and on 6th July the Guha defendants filed an amended pleading in which for the first time they sought to have their prior and subsequent mortgages enforced in the plaintiff's suit. On 18th July issues were framed, including an issue as to the sums due on the respective mortgages in favour of the plaintiff and of the Guha defendants. On 29th August an issue, not now of importance, was amended at the instance of Nabin Kishore. After her death in September 1932, the appellant, who had filed no written statement on his own account, asked leave on 1st November 1932, to file a new written statement as her representative. He was given leave, but as he applied late, leave was orally given on the terms that he could take no fresh ground of defence apart from those already raised by her previous written statement. He filed a written statement on 14th November 1932, of which paras. 5 to 7 setting up an interest of third parties in the mortgaged property was struck out by order of 19th November.

5. The first and main contention of the appellant throughout has been that Nabin Kishore was a purdanashin lady, that the mortgage deed sued upon was not explained to her, and that for this reason the mortgage is invalid even against him. Both Courts in India held on very convincing evidence that though an old lady, Nabin Kishore had considerable capacity for business; that the deed was read over to her, though it was not explained; that she understood its effect except that she did not understand that she was making herself personally liable to repay the money borrowed from the plaintiff. Neither Court in India appears to have appreciated that if for want of explanation the lady did not understand an important feature of the transaction, it cannot be held that her mind and free consent went with her act in executing the deed. A purdanashin woman is not required to understand every technical detail of a bargain. In the judgment of the Board delivered by Lord Buckmaster in *Sunitabala Debi v. Dhara Sundari Debi* this is pointed out and the "proper and necessary test" was held to have been applied by the Subordinate Judge who had found that the lady had sufficient intelligence to understand the relevant and important matters, that she did understand them as they were explained to her, that nothing was concealed and that there was no undue influence or misrepresentation.

6. and in *Farid-un-nisa v. Mukhtar Ahmad*, the Board stated the requirement as being that the disposition made must be substantially understood and must really be a mental act as its execution is the physical act of the person who makes it.

7. Though there may not be "a clear understanding of each detail of a matter which may be greatly involved in technicalities" -to use Lord Buckmaster's words-there may still be an intelligent comprehension of the bargain on the part of the lady. In such a case the bargain is good and is good as a whole. But if a feature of the transaction affecting in a high degree the expediency of her entering into it is not understood by the lady, the bargain cannot be divided into parts or otherwise reformed by the Courts so as to uphold certain portions of it while rejecting others. Her answer to a suit upon the deed is not that she has an equitable defence to the enforcement of a certain stipulation but that it is not her deed. The protection extended to a person in her situation is protection against being held bound by a transaction which never had her free and intelligent consent.

8. Their Lordships must accept the concurrent finding of the Indian Courts that the lady did not understand that she was incurring personal liability for the loan and on this view must dispose of the case on the footing that the mortgage deed did not bind her at all. What defence is that to the appellant ? That he had the beneficial interest in

the property is agreed, though the trust deed of 1913 is not before the Board. He was competent to mortgage his interest. No doctrine of the law of India has been indicated to their Lordships which prevents a beneficiary under a trust from dealing with his interest by way of mortgage, though it is true enough that in India such an interest is not technically regarded as an equitable estate. If Nabin Kishore had a life interest in one of the villages, as she would appear from her son's will to have had under her husband's permission to adopt, that in no way affects the present suit. The life interest has come to an end. The mortgage is not being enforced against it, but is good and enforceable against the appellant's interest in the village - an interest which came to him as his father's heir, though subject, it may be, to certain life interests outstanding in his father's mother and widows. The plaintiff's mortgage is plainly enforceable against the appellant, whose defence is neither honest nor substantial.

9. The only other question raised by the appeal has reference to the relief granted to the Guha defendants in respect of their subsequent mortgages of 1920 and 1923 (Exs. R and T). No relief whatever was given to them in respect of their prior mortgage of 18th March 1918 (Ex. S) and no personal decree was given to them in respect of either of the subsequent mortgages. Under Order 34, Rule 4, clause 4, Civil Procedure Code, they were at least entitled to redeem the plaintiff or to receive their own mortgage money under Exs. R and T out of the surplus sale proceeds remaining after satisfaction of the plaintiff's mortgage. If they pay off the plaintiff they become entitled to apply for a final decree for sale in the plaintiff's stead. They have been given this relief and nothing more. The appellant claims to have a grievance that some objection to the validity of these subsequent mortgages was taken by him, but has not been tried. But their Lordships have not succeeded in ascertaining the nature of the objection which requires still to be tried. The execution of the deeds is not disputed, there is no ground for objecting to the rate of interest, the sums due upon the deeds have been enquired into and ascertained. The trial Judge rightly refused to allow the appellant to set up the interest of his father's widows and the decree will not bind them. The appellant has not shown to their Lordships any ground for dissatisfaction with the orders of the trial Judge upon his belated written statement of November 1932 - orders which have been already detailed in this judgment. On this part of the case also the appeal must fail. Their Lordships will humbly advise His Majesty that this appeal be dismissed. The appellant will pay the costs of respondent 1.

Appeal dismissed.

Cases Referred.

,(1919) 6 AIR 1919 PC 24=53 IC 131=46 I A 272=47 Cat 175 (PC) at p. 278,

(1925) 12 AIR 1925 PC 204=89 IC 649=52 IA 342=28 OC 338=47 All 703 (PC) at p.
350,