CALCUTTA HIGH COURT

Chainta Dasya

Vs.

Bhalku Das

(Graham, J.)

17.03.1930

JUDGMENT

Graham, J.

1. This is an appeal by the plaintiff from a decision of the Subordinate Judge of Jalpaiguri reversing a decision of the Munsif, 2nd Court, Jalpaiguri, and arises out of a suit brought by the plaintiff to set aside a kabala on the ground that it was obtained by fraud, misrepresentation and undue influence. The plaintiff was a tenant of the defendant and her case was that she was tricked into executing a document which aha believed to be a mortgage bond on a representation made by the defendant that he had got a decree against her for ₹ 500 and that upon that pretext the document was executed by her. It proved however eventually to be a kabala whereby she disposed of her entire properties including her homestead. The defence was that the kabala in question was executed for good consideration which consisted of : (1) a debt of ₹ 117 due in respect of two bonds; (2) a debt for arrears of rent and (3) a sum of ₹ 112 odd in cash. The trial Court upon a consideration of the evidence and all the circumstances of the case came to the conclusion that no consideration had been paid to the plaintiff and that she had been tricked into executing the kabala under the belief that what she was executing was a usufructuary mortgage with the object of discharging her liabilities.

2. The Munsif in arriving at his decision attached a good deal of importance to the fact that the plaintiff was an illiterate woman of low mentality and also to the fact that in carrying out the transaction she had not had the advice or assistance of any relative or of any person who could give her independent or intelligent advice. The evidence establishes that her husband was away at the time and that her son-in-law who might have been present was in fact not present and knew nothing about the transaction. The Munsif therefore decreed the suit with costs. The defendant then appealed to the District Court and the learned Subordinate Judge who heard the appeal reversed the findings of the trial Court and held that the sale deed was not taken by fraud, it was not liable to be declared as void and nugatory and that it was executed for good consideration. This appears to be a finding of fact with which we are not at liberty to interfere in second appeal unless it can be shown that the finding has been arrived at through some error of law. On the whole the conclusion at which I have arrived, speaking for myself, is that the finding of the lower appellate Court is vitiated by what appears to me to be a fundamental error in regard to the

established rule of law relating to transactions of pardanashin women. The learned Subordinate Judge has observed in his judgment:

> she was not a pardanashin lady and she was bound to prove all these allegations of fraud and misrepresentation. This in my opinion she has failed to do.

3. Further on he says:

> So the whole case of the plaintiff rests upon her own uncorroborated testimony. In the circumstances her suit could not have been decreed even if the defendant had not adduced any rebutting evidence.

4. The rule of law so far as pardanashin women is concerned is well known and has been clearly laid down in many decisions of the Privy Council. It is true that most of those decisions relate to the case of pardanashin ladies. We have not been referred to any case in which the principle has been extended to the case of other women who do not come within that class; but that does not seem to be any reason why a rule which is applicable to pardanashin ladies on the ground of their ignorance and illiteracy should be restricted to that class only and should not apply to the case of a poor woman who is equally ignorant and illiterate and is not pardanashin simply because she does not belong to that class. If the view of the matter were adopted the effect clearly would be to confer an unfair advantage upon rich women as compared with poor women. The object of the rule of law is to protect the weak and helpless, and it should not, in my judgment, be restricted to a particular class of the community. It seems to me that what the learned Subordinate Judge has done amounts in a manner to misplacing the onus of proof. The plaintiff proved certain facts, for example, that her husband was away and her son-in-law also was not present at the time of the transaction, that she had no independent advice, that she was not in such need of money at the time, as would necessitate the sale of her entire land; further she herself deposed that she was given to understand that the deed in question was a usufructuary mortgage and that she had no idea that she was selling the land outright. These facts, it seems to me, were sufficient to discharge the onus which lay upon the plaintiff and shift on to the defendant the onus of satisfying the Court that the nature of the transaction had been duly explained and properly understood by the plaintiff. That in my judgment is the point of view from which the evidence should have been examined.

5. The result is that the decree of the lower appellate Court is set aside and the case is sent back to that Court in order that the appeal may be reheard and decided according to law in the light of the observation made above. Costa will abide the result.

Mitter, J.

6. I agree with my learned brother that this appeal should be allowed. It seems to me that the lower appellate Court in arriving at a conclusion of facts which cannot be as sailed in second appeal has misplaced the burden of proof on the plaintiff and that consequently it is permissible to us in second appeal to examine the findings of fact as the findings of fact are not binding on us by reason of the onus having been wrongly placed on the plaintiff. That this is the true legal position has bean pointed out by their Lordships of the Judicial Committee in the case of *Peddi*

Reddi Jogi Reddi v. Chinnabbi Redd [1]Their Lordships say this:

> Their Lordships would further observe that all the Courts below seem to have thrown the onus upon the appellant of proving that the properties he claimed were his own, instead of placing it, as it should be, upon the plaintiff. It therefore appears to their Lordships that there is no question of fact to be found that can be binding upon an appellate Court on a second appeal and that it is necessary for them to consider what is the true position.

7. It appears in this case that the suit was brought by the plaintiff to set aside a deed of sale alleged to have been executed by her on the 2nd Falgoon 1331 B.S. on the ground that the said deed was obtained by fraud, misrepresentation and undue influence. It appears that the appellant is a tenant of the defendant-respondent and her cage is that she was lured into executing this document in the belief that she was really executing a deed of mortgage in consideration of certain debts which owing to the landlord both on account of arrears of rent and on account of money advanced to her. It appears and it is not disputed that the plaintiff is an illiterate village woman. She is not in the strict sense of the term pardanashin woman and the question arises whether the same protection which is thrown round a transaction entered into with a pardanashin woman should be extended to the plaintiff in the present case. It is true that outside the class of regular pardanashin women it must depend in each case on the character and position of the individual woman, whether those who deal with her are or are not bound to take special precautions that her action should be intelligent and voluntary and to prove that it was so in case of dispute. That was laid down by the Judicial Committee of the Privy Council in the case of *Hodges v. The Delhi and London Bank, Limited*[2] So even in the case of a woman who is outside the regular pardanashin class it is for those who lived with her to establish that she had the capacity of understanding the transaction that was entered into and that she entered into the transaction voluntarily and with full knowledge and import of what the transaction meant. The lower appellate Court found that she had stated that in the absence of her husband and son-in-law she was led to execute this document which had the effect of transferring all that she had in this world to the present defendant; she has given her evidence and the lower appellate Court says that the whole case rests upon her own uncorroborated testimony and therefore in that view of the lower appellate Court her suit could not have been decreed even if the defendant had not adduced any rebutting evidence. This seems to me to be an inversion of the rule with regard to the burden of proof. The first Court had an opportunity of seeing her and the burden was certainly on the defendant to establish that she understood the true import of the transaction; in other words, that she understood that she was parting for all time to come with all that she had in order to pay off certain debts which she owed to the present defendant. The lower appellate Court, as my learned brother has pointed out, has miscast the burden of proof and the case should therefore be sent back in order that the appeal may be reheard after properly placing the burden of proof on the defendant to show that she understood the true import of transaction.

[1] A.I.R. 1929 P.C. 13

[2] [1900] 23 All. 137