

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Pertap Chunder Ghose v. Mohendra Purkait and others, from the High Court of Judicature at Fort William, in Bengal; delivered 29th June 1889.*

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Present:

LORD WATSON.

SIR BARNES PEACOCK.

SIR RICHARD COUCH.

[*Delivered by Sir Richard Couch.*]

This suit was brought by the Appellant, and the plaint stated that, on the 21st June 1881, the first Defendant, Rukkhit Chunder Purkait, for himself and as guardian of three minor Defendants (two of whom are the first and second Respondents) executed a registered kabuliyat, by which he rented 177 bighas 5 cottahs and 15 chit-tacks of land of the Plaintiff, engaging to pay an annual rental of Rs. 487. 9, and 1. 10. 12 kahans of paddy worth Rs. 33. 4, total Rs. 520. 13, and was in occupation of the above tenure; and that, exclusive of payments, there was due for rent and interest on overdue instalments, and for road and public works cesses, and interest thereon, a total of Rs. 1,640. 11. 1, and prayed for a decree for that amount and interest during the pendency of the suit. Rukkhit Chunder, in his written statement, said that he agreed to execute a kabuliyat, and a draft was made out and read to him, and when it was subsequently engrossed on a stamp the Plaintiff said it was just the same as the draft, and the Defendant,

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in reliance on that statement, signed the document, but the draft and the engrossment were different. The minor Defendants, by their mother and guardian, said they had no knowledge of the kabuliyat, and that Rukkhit had no power to execute a kabuliyat on their behalf. The Second Subordinate Judge of 24-Pergunnahs, who tried the case, negatived the allegation that any deception was practised in getting the signature to the kabuliyat, but he held that all the terms of it were not binding on Rukkhit, "the bargain being very unconscionable and "consideration very inadequate," and that Rukkhit, whether guardian or manager, had no power to bind the other members of the family as the contract was not for their benefit. He, however, admitted in evidence an ikrar or agreement executed on the 25th April 1880 by Abhoy Churn, the father of the minors and uncle of Rukkhit, who died in April or May 1881, and who was the kurta or manager of the family, and by other tenants, by which he said they agreed to pay Rs. 2. 12 per bigha. And he made a decree for rent according to the ikrar of 144 bighas 9 cottahs 7 chittacks and 15 gundahs, considering that the Defendants were not proved to be bound by the area mentioned in the plaint.

From this decree there were appeals by both parties, which were heard before the Additional Judge of 24-Pergunnahs. In his judgment, after saying that he agreed with the Subordinate Judge in the finding that Rukkhit signed the kabuliyat, he says, to quote his own words,—  
 "But he (the Judge) considers that the terms  
 "of the kabuliyat are so extortionate and hard  
 "that he finds it difficult to believe that the  
 "Defendant executed the kabuliyat with full  
 "knowledge of its terms, or after fully realizing  
 "the effect of the terms, or at all events that

“ some extraneous motive or influence was used,  
 “ such as a promise that all the terms would  
 “ not be enforced. Now as to this I have to  
 “ remark that the only question before us is,  
 “ Did the Defendant knowingly execute the  
 “ agreement as to the amount of rent? There  
 “ are many stipulations in the kabuliyat, and  
 “ some of them are very hard and even flagrantly  
 “ unjust, but we have nothing to do with them  
 “ just now. All we want to know is, did  
 “ Defendant know what he was about when he  
 “ agreed to pay the rent stated in the kabuliyat?  
 “ It may be and it appears from the Naib’s  
 “ evidence that there are some stipulations in  
 “ the kabuliyat which were not intended to be  
 “ acted upon, but they need not be considered  
 “ until Plaintiff attempts to enforce them.”  
 The kabuliyat after the agreement to pay the  
 rent contains these words,—“ If you (the  
 “ Plaintiff) or your heirs require the land you  
 “ and they will take khas possession of it. I  
 “ (the tenant) and my heirs shall never have  
 “ occupancy right to the said lands;” and  
 towards the end a clause that if the rent is un-  
 paid the tenants shall at the pleasure of the  
 Plaintiff and of his heirs be ejected from the  
 land, and it shall be his and his heirs’ khas  
 property. The Subordinate Judge said it had  
 been proved to his satisfaction by printed dakhilas  
 that the Defendants paid rent at a uniform  
 rate for upwards of twenty years, and were  
 therefore in a position to plead the presumption  
 arising therefrom in an enhancement suit. The  
 evidence of the naib, which the District Judge  
 appears to have believed, is that the tenants ob-  
 jected to the condition that khas possession might  
 be taken at will, and therefore they were told  
 that that condition had been inserted because  
 then the tenants would remain under the in-  
 fluence (of the zemindar), and that it was not

that the Plaintiff would actually eject the tenants; and that, with reference to the condition that khas possession would be taken if rent were not paid by the end of the year, it was said that this was a penalty clause, and that the law was to that effect, and the Plaintiff made those statements. It was admitted by the counsel for the Plaintiff that the statement of the effect of the law was a misrepresentation. Although the District Judge does not expressly find that there was a misrepresentation, their Lordships think that this is the effect of his judgment. He says, "Granting that they (the tenants) were under a mistake as to their position, and that Plaintiff represented his power, as an auction purchaser, as greater than it really was, this would not amount to such misrepresentation as would vitiate the contract." In this he was in error. Where one party induces the other to contract on the faith of representations made to him, any one of which is untrue, the whole contract is, in a Court of Equity, considered as having been obtained fraudulently. If such a representation had not been made the tenants might have refused to sign the kabuliyat. Further, if there is any stipulation in the kabuliyat which the Plaintiff told the tenants would not be enforced, they cannot be held to have assented to it, and the kabuliyat is not the real agreement between the parties, and the Plaintiff cannot sue upon it.

The Subordinate Judge, it has been seen, founded his decree upon the ikrar. The District Judge held that this document was inadmissible for want of registration, as operating to create or declare an interest, and coming under Clause (b) of Section 17 of the Registration Act (3 of 1877. Their Lordships are of opinion that it does not come under that clause, but under Clause (h), as a document merely creating a

right to obtain another document, which will, when executed, create or declare an interest. Its terms are that the tenants conjointly promise that they will sign and have registered kabuliyats in respect of rents at the rates mentioned for the old lands which they have, and for the excess land, if any be found on measurement. It clearly was not the kabuliyat described in the plaint, and the evidence of the Plaintiff himself showed that it was not intended to be the final agreement. It could not be sued upon as an agreement to pay the rent claimed, which the Subordinate Judge held it to be.

The District Judge, taking the view that the only question was whether Rukkhit agreed to pay the rent stated in the kabuliyat, and finding that he had power to contract on behalf the minors, dismissed the Defendant's appeal, and in the Plaintiff's appeal made a decree for the Plaintiff for the amount of his claim with interest. From this the Defendants appealed to the High Court, the Plaintiff also appealing on the ground that the ikrar ought not to have been held to be inadmissible. That Court set aside the judgments of both the Lower Courts, and dismissed the Plaintiff's suit with costs in all Courts, but did not in the judgment take notice of the question of the admissibility of the ikrar. Their Lordships have doubted whether the Judges of the High Court in hearing the appeals, had regard to the provision in the Code of Civil Procedure (Act 14 of 1882), Section 584, as to appeals from appellate decrees, and thought they were at liberty to consider the propriety of the findings of the District Judge upon questions of fact. Certainly there are some passages in their judgment, particularly in the latter part if not in the former, which suggest this. Their Lordships must observe that the limitations to the power of the Court by Sections 584 and 585,

in a second appeal, ought to be attended to and the Appellant ought not to be allowed to question the finding of the first Appellate Court upon a matter of fact.

For the reasons which have been stated, their Lordships are of opinion that the Plaintiff's suit should be dismissed and that the decrees of the High Court are the proper ones. They will therefore humbly advise Her Majesty to affirm those decrees and dismiss the appeal. The Appellant will pay the costs of it.

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