

Privy Council Appeal No. 61 of 1933.
Allahabad Appeal No. 3 of 1932.

Lala Kalyan Mal, receiver of the firm Sahi-Mal Manohar Das - *Appellant*

v.

Ahmad Uddin Khan and another - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT ALLAHABAD.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL DELIVERED THE 20TH JULY 1934.

Present at the Hearing :

LORD RUSSELL OF KILLOWEN.

SIR LANCELOT SANDERSON.

SIR SHADI LAL.

[*Delivered by* SIR SHADI LAL.]

This appeal has been brought from a decree of the High Court of Judicature at Allahabad dated the 12th November, 1931, which reversed a decree of the Additional Subordinate Judge of Shahjahanpur dated the 18th September, 1928, and dismissed the appellant's suit with costs.

The plaintiff, who is the receiver of a firm known as Sahi Mal-Manohar Das, brought the suit, which has given rise to this appeal, to enforce a mortgage executed on the 1st November, 1916, in favour of the firm by one Musammat Imam Begum and her son Bashir Uddin. The mortgage was made in order to secure the repayment of Rs. 7,500 with interest thereon at Rs. 9 per cent. per annum.

The claim was resisted by Musammat Imam Begum, who denied the execution of the mortgage deed and the receipt of the consideration. She pleaded that she was a *purdanashin* lady; and was, at the time of the execution of the mortgage, old as well as deaf; and that she was not bound by the transaction, as the deed was neither read out, nor explained, to her. She described

her son Bashir Uddin to be a spendthrift, and repudiated her liability for the loan, if any, contracted by him.

The trial Judge found that the mortgage deed was executed by both the defendants for consideration, that its terms were explained to Musammat Imam Begum, and that she understood the nature and effect of the transaction. He accordingly granted a preliminary decree for sale in accordance with the provisions of Order XXXIV, r. 4, of the Civil Procedure Code.

This decree was made the subject of an appeal by Musammat Imam Begum to the High Court of Judicature at Allahabad. During the pendency of the appeal the lady died, and her grandson was impleaded as her legal representative. The learned Judges, who heard the appeal, concurred with the trial Judge, "that the document was read over to her by the Sub-Registrar at the time and that an attempt was made to explain it to her," but considering that she was old, illiterate and deaf they came to the conclusion that there was "no satisfactory evidence to prove that it was really understood by her." On the question of the liability of Bashir Uddin they found that he had no interest in the mortgaged property, and that his personal liability could not be enforced after the expiration of six years from the date of the mortgage. The appeal was accordingly allowed and the suit dismissed with costs.

The determination of this appeal, which has been preferred by the plaintiff, depends upon a question of fact. It is settled law that in the case of a document executed by a *pardanashin* woman it is not sufficient to show that the document was read out to her; it must further be proved that she understood its nature and effect. The quantum of evidence required to discharge the onus must depend upon the circumstances of each case. The mere fact that the woman lives in seclusion or sits behind a *pardah* does not necessarily show that she is weak-minded, ignorant or incapable of understanding her affairs. Any general proposition ascribing to her such incapacity would be at variance with actual facts. It is, however, clear that the Courts, in their anxiety to protect *pardanashin* ladies, have repeatedly affirmed the doctrine that a person, who is interested in upholding a transaction with a *pardanashin* woman, has to prove, not only that the deed was executed by her, but also that it was explained to, and was really understood, by her.

In the present case, it is not disputed that Musammat Imam Begum was, not only a *pardanashin* lady, but also illiterate. She was, at the time of the transaction in question, old and infirm, and is found by the High Court to be "hard of hearing and very deaf." Whatever may be the meaning sought to be conveyed by this phrase, there can be little doubt that her sense of hearing was impaired, and that special care was needed to explain to her the terms of the document. It does not appear that such care was taken by the Sub-Registrar. In view of all the circumstances the

learned Judges of the High Court decided that the evidence for the plaintiff did not go so far as to show affirmatively that the terms of the deed were understood by the lady.

The principle is well established that in an appeal the burden of proving that the judgment appealed from is wrong rests upon the appellant, and that he does not discharge that onus by merely showing that there is an equal possibility of the judgment in favour of one party or the other being correct. After giving full consideration to all the circumstances relevant to the issue of whether Musaromat Imam Begum understood the transaction, their Lordships find themselves unable to hold that the judgment of the High Court is wrong.

The learned counsel for the appellant has also urged that the case against Bashir Uddin should be treated as one of fraud, to which section 18 of the Indian Limitation Act IX of 1908 would be applicable. He has contended that Bashir Uddin represented himself to be joint owner of the mortgaged property, and that the plaintiff was, by reason of that fraud, prevented from instituting the suit within the period of six years prescribed by law. It is unnecessary for their Lordships to deal with the merits of the question. It is clear that the contention was never put forward in either of the Courts in India, and that, while Order VII, r. 6, of the Civil Procedure Code provides that where the suit is instituted after the expiration of the period prescribed by the law of limitation the plaintiff shall show the ground upon which exemption from such law is claimed, no exemption on the ground of fraud was claimed in the plaint. Nor is there any proof of the alleged fraud, or of the date when it became known to the plaintiff. The claim for a personal decree against Bashir Uddin is clearly barred by the statute of limitation.

Their Lordships will, therefore, humbly advise His Majesty that the appeal be dismissed with costs.

In the Privy Council.

LALA KALYAN MAL, receiver of the firm
SAHI-MAL MANOHAR DAS,

vs.

AHMAD UDDIN KHAN AND ANOTHER.

DELIVERED BY SIR SHADI LAL.

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