

*Privy Council Appeal No. 91 of 1933.*

*Patna Appeal No. 8 of 1932.*

Babu Homeshwar Singh and Others - - - - - *Appellants*

Maharajadhiraj Kameshwar Singh Bahadur of Darbhanga  
and Another - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT PATNA.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL DELIVERED THE 20TH JUNE, 1935.

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*Present at the Hearing:*

LORD ATKIN.

SIR JOHN WALLIS.

SIR SHADI LAL.

[*Delivered by* SIR JOHN WALLIS.]

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This is an appeal from a judgment and decree of the High Court at Patna affirming the judgment and decree of the Subordinate Judge of Darbhanga and giving the plaintiff the Maharajadhiraj of Darbhanga a mortgage decree against the five defendants (1) Babus Homeshwar Singh (2) Kuleshwar Singh (3) Chiteshwar Singh and (4) and (5) Padmanandji Singh and Taranandji Singh, the minor sons of Kuleshwar Singh, on a mortgage executed by defendants 1 to 3 in the plaintiff's favour on the 20th February 1923 for Rs.5,40,506. The consideration for the mortgage was Rs.2,29,214.10.4 owing to the plaintiff as shown in Schedule III; Rs.2,21,129.10.9 to be paid by the plaintiff to set aside a Court sale of the defendants' properties which were the subject of a babuani maintenance grant made by the plaintiff's grandfather to the grandfather of the defendants 1 to 3, and were stated to be worth 40 lakhs of rupees; and the balance of Rs.90,000 odd as shown in Schedule IV to be paid by the plaintiff in discharge of the debts of the 3rd defendant, Chiteshwar Singh. The defendants' case was that the mortgage bond which was executed on the 20th February 1923, three days before the expiry of the time limited for setting aside the Court sale under Order 21 rule 89 of the Code of Civil Procedure was obtained by the plaintiff by undue influence, misrepresentation and fraud.

In support of the case of undue influence the defendants alleged that they had entered into negotiations with other people who were willing to advance them two lakhs of rupees which would have enabled them to set aside the Court sale, and that not to borrow from outside people, they had also entered into negotiations with the plaintiff who agreed to advance them the two lakhs at simple interest not exceeding six per cent., and to take separate bonds for one third of that amount from defendants 1, 2 and 3, who had partitioned their properties in 1918, to be secured by mortgage of their separate properties; and that thereupon they slackened their negotiations with other persons. The plaintiff kept putting them off, and on the 20th February 1923, two clear days before the time limited for the deposit in Court of the purchase money and the compensation money payable to the auction purchasers, the plaintiff refused to give them a loan except on the terms that all the defendants should execute a mortgage bond bearing compound interest at twelve per cent. and including, not only the sum required for the purpose of setting aside the Court sale, but also all the plaintiff's claims, as to some of which suits were pending, and also the debts due by Chiteshwar the third defendant to other persons. It was further alleged that it had come to the defendants' knowledge that it was owing to the plaintiff's influence that some of the money lenders had refused to make a loan; and that the plaintiff had thus further frightened them, rendered them helpless, and placed them at his mercy and that they had no option but to accept the terms offered, as if the money was not deposited on the 23rd February, they would lose their entire properties and be left paupers. The bond contained false statements, but there was no time for protest or alteration. The defendants knew very little English, and as the bond was only once read out hurriedly, they had no opportunity of consulting anyone or thinking over the terms. By reason of undue influence the plaintiff was in a position to dominate the will of the defendants, and took advantage of that influence to get them to consent to unfair terms which they proceeded to set out. They also claimed a reduction of interest under the Usurious Loans Act 1918, on the ground that the interest was excessive or that as between the parties the transaction was unfair.

Both the Courts below found that the defendants' case was false. As early as August 1922 they had applied to the plaintiff to whom they were already heavily indebted for a further loan. When their properties were sold in execution of a decree obtained by other creditors in January 1923, and they had thirty days ending on the 23rd February in which to set aside the Court sale, they entered into negotiations with several money lenders for a loan of two lakhs which would have enabled them to set aside the sale. At some date prior to the 5th February they also applied to the plaintiff who did not see them himself but negotiated with them

through the estate officials. On or about the 5th February they went to the palace about the rate of interest, and while they were waiting there, the plaintiff asked Harnandan Dass, a pleader who had been calling on him, to see them and explain to them that he was not prepared to accept less than twelve per cent. He said he had to pay income tax and supertax, and that he would eventually have to file a suit against them to recover the amount of the loan. He had several suits then pending against them in respect of previous loans.

Subsequently to this interview, a draft bond was drawn up by the estate officials embodying the terms on which the plaintiff was prepared to make the loan, which was to include in addition to the money required for setting aside the Court sale, the debts owing to the plaintiff, and also the debts owing by the 3rd defendant Chiteshwar to other creditors and amounting to Rs.90,000. These debts were not binding on the other defendants, as a complete partition between the three brothers had been effected in 1918, but a power of attorney Ex. 8 given to their manager Chandra Bushan Thakur on the 10th February shows that the defendants were contemplating raising a loan to discharge all their debts. Under the draft, compound interest at twelve per cent. was to be payable: On the 15th February the defendants' manager and Harnandan Dass already mentioned had a meeting with the senior estate lawyer at which a copy of the draft Ex.6 was discussed, and was afterwards initialled as "seen and approved" by the estate lawyer, and by Harnandan as "seen". On the following day Harnandan was sent for to the defendants' house. They were in possession of a copy of the draft, and the terms were again discussed, and Harnandan was retained to negotiate on the defendants' behalf for the insertion of two further clauses reserving their right to cut jungle trees and settle rents with the tenants. Harnandan succeeded in getting the plaintiff's consent to the insertion of these two clauses, and his bill for the consultation and for settling the terms of the mortgage bond on the 17th and 18th of February was paid by the defendants on the 20th February—when the mortgage was executed.

On or after the 16th February two of the defendants, Kuleswhar and Chiteshwar went to Calcutta where apparently negotiations with other money lenders were still pending; and on the 18th February Chandra Bushan informed them by telegram that the terms were settled and the money ready. On the 19th the defendant Homeshwar sent a further telegram stating that the stamp paper had been purchased (which was not the case) and the terms settled and telling them to come immediately. They accordingly returned to Darbhanga on the morning of the 20th. The schedules which were settled by the agents of both

parties and were in accordance with the terms of the mortgage were not completed until that morning. The stamped paper was then purchased, and some hours were spent in writing out the mortgage and the schedules. At about four o'clock the deed was ready, and was duly executed by the defendants 1 to 3.

On these facts both the lower Courts have recorded a finding that the defendants have failed to establish that in this transaction the plaintiff was in a position to dominate the will of the defendants, and this finding is destructive of the case of undue influence set up by the defendants, having regard to the terms of section 16 of the Indian Contract Act.

16.—(1) A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another—

(a) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or

(b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

(3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it, or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

Nothing in this sub-section shall affect the provisions of section 111 of the Indian Evidence Act, 1872.

Even if there had been a finding that the plaintiff had obtained an unfair advantage over the defendants, that would not have established a case of undue influence in the absence of a finding that the plaintiff was in a position to dominate the will of the defendants, as held by this Board in *Rani Sunder Koer v. Sham Kuishen* 34 I.A. 9.

Both the lower Courts have also found that the charge of twelve per cent. compound interest is not excessive nor the transaction unfair within the meaning of the Usurious Loan Act, 1918.

Mr. de Gruyther for the appellants has contended that there are not concurrent findings of fact which cannot be questioned on an appeal to His Majesty in Council. In the first place he argued, if their Lordships understood him rightly, that the findings were not concurrent because the Subordinate Judge acted on the evidence of Chandra Bushan already mentioned which the High Court treated as inadmissible. During the

cross-examination of this witness he was confronted with a written statement purporting to bear his signature which it was suggested he had given to the defendants' law agent some two years before the trial. He denied that he had given any such statement and deposed that his signature was a forgery. On objection taken on behalf of the plaintiff, the Subordinate Judge ruled, that the defendants' counsel was not entitled to cross-examine him with a view to showing that the statement was his, or to call evidence to establish this. At the end of the case a pleader not engaged in the case was called as a court witness. He deposed that the defendants' law agent had sent him to Chandra Bushan's house with this statement to get him to sign it, and that Chandra Bushan had signed it in his presence. He also said that it looked as if the statement was in Chandra Bushan's handwriting. In the High Court the learned Judges being rightly of opinion that the Subordinate Judge's ruling was not in accordance with law, altogether disregarded the evidence of this witness and decided the case without it. Now, even if the witness had been found to have made this previous statement, that would not have prevented his deposition from being evidence in the case, though it would have been unsafe to act on it except in so far as it was corroborated, as it largely was, by the other evidence in the case. Still less would it have made the statements in the previous statement evidence in this case. There was ample other evidence, both oral and documentary, of the facts deposed to by this witness which was accepted and acted on by both Courts, and in these circumstances their Lordships are of opinion that the facts above stated afford no sufficient reason for holding that the findings of both Courts were not concurrent within the meaning of the rule.

Mr. de Gruyther next contended that the findings of undue influence were not concurrent because on the appeal to the High Court Wort J., who delivered the principal judgment, held that it was not open to the appellants' counsel to argue that the plaintiff took advantage of the fact that the defendants were unable to raise a loan elsewhere to impose unfair terms upon them, because that would be inconsistent with the case on which they had gone to trial that they were in a position to raise a loan but were misled and prevented from doing so by the plaintiff. In their Lordships' opinion it is unnecessary to examine this ruling, because the terms imposed by the plaintiff were found not to be unfair, and even if they were unfair, that, as already pointed out would not establish undue influence, in view of the finding in which both the lower Courts have concurred that the plaintiff was not in a position to dominate the will of the defendants.

Lastly, there is in their Lordships' opinion no sufficient ground for questioning the finding of both the lower Courts,

that the charge of compound interest at twelve per cent. was not excessive or otherwise open to challenge under the Usurious Loans Act, 1918.

In their Lordships' opinion it is not open to the appellants to go behind the concurrent findings in the case, and the appeal therefore fails and should be dismissed with costs. They will humbly advise His Majesty accordingly.



In the Privy Council.

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BABU HOMESHWAR SINGH  
AND OTHERS

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MAHARAJADHIRAJ KAMESHWAR  
SINGH BAHADUR OF DARBHANGA  
AND ANOTHER

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DELIVERED BY SIR JOHN WALLIS.

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