

(1915) 05 CAL CK 0039
In the Calcutta High Court

Bhuban Mohini Dasi

APPELLANT

Vs

Gajalakshmi Debi and Others

RESPONDENT

Date of Decision : 10-05-1915

Acts Referred:

Citation : 32 Ind. Cas. 119

Hon'ble Judges : Richardson, J; Fletcher, J

Bench : Division Bench

Judgement

Fletcher, J.—This is an appeal from a decision of the learned Subordinate Judge of Hooghly reversing the decision of the Munsif of Serampur. The plaintiff who is the appellant before us brought a suit to recover a certain sum of money on a mortgage security. The sum advanced was Rs. 500. Both the plaintiff and the defendant were pardanashin women. The Court of first instance decreed the suit. On appeal, the learned Subordinate Judge has set aside the decree of the Munsif. Hence this appeal to this Court.

2. There is only one question in this case and that is whether, on the findings of fact, the defendant is bound by the mortgage security. It has been found by the learned Judge, and that finding is not quarrelled with, that the lady borrowed Rs. 500 and received the money for her own purposes. That, of course, is a material finding. It has also been found by the learned Judge that the lady instructed her own men to draw up the mortgage-deed. It has also been found that her mukhtear and husband, acting under a document the proper name of which is, I suppose, am-mukhtear-namah, presented the document at the Registration Office and had it duly registered, the am-mukhtear-namah authorising the husband to appear at the Registration Office on behalf of the wife, the defendant. Of course, it is evident on a document like that that the person must have appeared before the Registrar for the purposes of the Registration Act. It has been suggested that the husband might have been authorised to appear for some purpose unauthorised by the Registration Act. I do not think that that is so. The appearance must obviously have been for the purpose of registering the

document and acknowledging the signature on the document. That is the way in which a document can be registered when the executant is a pardanashin woman. But stress has been placed in this case on a judgment of the Privy Council [Kali Bakhsh. Singh v. Ram Gopal Singh 21 Ind. Cas. 985 : 16 O.C. 378; (9(sic) 4) M.W.N.N. 112 : 12 A.L.J. 115 : 15 M.L.T. 130 : 19 C.L.J. 172 : 1 O.L.J. 67 : 26 M.L.J. 121 : 16 Bom. L.R. 147 : 36 A. 81 : 18 C.W.N. 282 (P.C.)]. The view expressed there is that a pardanashin lady has got to have the document explained to her. As I gather from that judgment, there is nothing in it which suggests that when a pardanashin lady has given instructions to her own men to draw up the deed in a particular way and when that document has been drawn up in that particular manner, anything further is required. It is not required that the document should be explained after it has been drafted, provided that the draft, in fact, corresponds with what the lady understands before it was made. It is suggested that the lady was an ignorant woman. I am not sure that her ignorance was so great as has been suggested by the learned Vakil for the respondent. She said that she never executed a document and she also kept back the evidence that would prove positively that she knew well about the contents of the document. It seems to me that, although the lady was not a literate one, she was gifted with a certain amount of intelligence. Be that as it may, the evidence offered in this case, namely, that the lady gave instructions for the preparation of the document and that she did, in fact, receive the advance of Rs. 500 and the subsequent registration of the document, do amply warrant the Court to come to the conclusion that the lady fully understood the document that she executed. In cases where the document comes from the side of the lender, it must, no doubt, be read over and explained to the executant if the executant be an illiterate one, but in, this case, when the document came from the side of the defendant, the mortgagor, it was amply sufficient to warrant the conclusion that the lady fully understood the document. The learned gentleman who has conducted this case on behalf of the respondent says that this is a second appeal and that we are not entitled to interfere with the finding's of fact. That is quite true. But there is no reason why the Appellate Court should not make deductions from facts without disturbing the findings arrived at by the lower Court. I have no doubt that the Court ought to find that this lady fully understood the document. The result, therefore, is that we set aside the judgment and decree of the lower Appellate Court and restore the judgment and decree of the Court of first instance. The defendant must pay to the plaintiff her costs both in this Court and also in the Courts below.

Richardson, J.

3. I agree that the judgment and decree of the lower Appellate Court should be set aside and the judgment and decree of the first Court should be restored.