

(1914) 03 PRI CK 0001

In the Privy Council

Lala Mahabit Prasad and others

APPELLANT

Vs

Mt. Taj Begum and others

RESPONDENT

Date of Decision : 18-03-1914

Acts Referred:

Citation : (1914) AIR(PC) 95

Hon'ble Judges : Ameer Ali, John Edge, Parmoor, Sumner, Lords Moulton, JJ.

Advocate : Douglas Grant, Nevill, Rogers, Barrow, A.M. Dunne, B. Dube, DeGruyther, for the Appearing Parties.

Judgement

Lord Moulton

In this case their Lordships have before them two appeals from two decrees and judgments, dated 2nd December, 1910, of the High Court of Judicature for the North-Western Provinces, Allahabad. The suit in which these appeals are brought is a suit for the recovery of money due on a registered mortgage bond alleged to have been executed by the defendants Musammat Taj Begum and Syed Sultan Muhammed Khan in favour of Lala Ramanuj Dayal (since deceased), father of the appellants. The facts of the case are as follows :-

Musammat Taj Begum is a pardanashin woman, and Sultan Muhammad Khan is her younger brother. Prior to June, 1895, they had been engaged in law suits with the members of their family to recover their shares of inheritance in the property of their father Syed Mir Khan, and one Babu Raghubir Saran had been the pleader representing them in these suits. The litigation terminated in their favour, and a decree of partition had been pronounced, but the time for appeal had not expired, and it is not seriously contested that at the date of the execution of the mortgage bond Babu Raghubir Saran still stood to the defendants in the position of their legal adviser. The mortgage-bond was nominally executed in favour of Lala Ramanuj Dayal, but it is admitted that he was only benamidav for Babu Raghubir Saran who was the real mortgagee. The amount of the money advanced by the mortgagee was 8,000 rupees, of which 4,773 is said to have been cash, and the balance went mainly, if not entirely, in

the discharge of moneys due from the defendant Syed Sultan Muhammad Khan. The greater part of this indebtedness appears to have been to Babu Raghubir Saran himself. The whole of the property mortgaged belonged solely to Musammat Taj Begum.

It follows, therefore, that we have a case of the legal adviser to a pardanashin woman acting the part of money-lender to her, and procuring the execution by her of a mortgage-bond to secure its repayment. It is difficult to conceive a case in which the Court would be entitled and indeed obliged, to examine the transaction with closer scrutiny, or to insist more sternly on the mortgagee supporting the heavy onus of showing that the client was fully aware of the meaning and effect of the deed, and that the transaction was a fair and honest one. The appellants have entirely failed to support either of these issues. The Judge of the Court of First Instance has found that the interest, which was compound interest at the rate of 1 per cent, per month (with half-yearly rests) was unconscionable, and has accordingly reduced it, and although an appeal was brought against this part of his decision it was dismissed by the High Court, and the appeal against that decision has not been persisted in before their Lordships. The case of the appellants with regard to the other issue is equally hopeless. There are concurrent decisions of the two Courts to the effect that the plaintiffs have failed to prove that the meaning and effect of the mortgage-bond was duly explained to the real defendant Mst, Taj Begum. The facts relating to this issue are as follows.

The property set out in the schedule to the mortgage-bond as being the property mortgaged, consisted of property belonging to and in the possession of the defendant Mt. Taj Begum. But a clause was inserted in the mortgage-bond to the effect that after the partition should have been effected the property awarded to that defendant in that partition should be substituted for the scheduled properties. It is admitted that the effect of this clause would be to quadruple the amount of property mortgaged. The Judge of First Instance finds that there is no evidence that this was properly explained to Mst. Taj Begum, but holds that this does not invalidate the execution because in his opinion the clause would be inoperative. Their Lordships are unable to agree with this opinion. The clause is clear in its language, and if the mortgage-bond had been valid would have subjected the whole of the lady's share to the mortgage. The High Court also finds that the plaintiffs have not shown that this clause was properly explained to the lady, and their Lordships entirely concur in its finding.

It follows therefore that as against the present appellants it must be taken that the terms of the mortgage-bond were extortionate and that the lady, the mortgagor, did not understand the effect of the deed by reason of its not having been adequately explained to her. The deed is therefore void and cannot be enforced against her.

The Judge at the trial who decided in favour of the deed (subject to the alteration in respect of the rate of interest) appears to have been influenced by the

consideration that the relatives of the lady must have been aware of the transaction because her brother was a co-signatory of the deed, and two of her relatives were the identifying witnesses. Apart from the question of the sufficiency of such a consideration their Lordships are of opinion that the facts of the case entirely destroy any inference that the relatives of the lady were acting as a protection to her in the transaction. Her brother was personally interested in carrying through the transaction, because by it he obtained the discharge of debts for which he alone was primarily liable, and this relief was obtained by mortgaging property in which he had no interest. With regard to the other relatives it is clear that the family generally were taking gross advantage of the unprotected state of this pardanashin lady. She had been betrothed but the relations would not give consent to her marriage unless she surrendered the whole of her share in the family property. Their Lordships can only express their great surprise that under these circumstances the relatives should have been regarded by the Trial Judge as defenders of the lady's interests.

This point is sufficient to decide the case, it is not necessary to refer to other points raised in the proceedings.

Their Lordships will therefore humbly advise His Majesty that these appeals should be dismissed with costs.