

(1886) 12 PRI CK 0004

In the Privy Council

Mussamat Amanat Bibi

APPELLANT

Vs

Luchman Pershad and Narotam Dass

RESPONDENT

Date of Decision : 15-12-1886

Acts Referred:

Citation : (1886) 14 IndApp 18

Hon'ble Judges : Hobhouse, Barnes Peacock, Richard Couch, JJ.

Judgement

Barnes Peacock, J. 1. The question in this case is whether there are sufficient grounds made out by the Plaintiff for reforming or altering the deed of mortgage which was executed on the 15th of October, 1878. The Plaintiff in his plaint declares: - "That on the 15th October, 1878, Fyzabad, the present Plaintiff, having been deceived by the Defendants, executed, according to the accounts furnished by the Defendants, and without examining them, an instrument for Rs. 437,376.102a. in lieu of the aforesaid decrees, and of the debt due to Ram Kishen Mahajan." Then he says that, looking to the actual accounts between the parties, "Rs. 58,688 ought to be deducted from the mortgage money entered in the aforesaid instrument," and so on, and then that the cause of action accrued on the 25th of June, 1879, when he found out the mistake. 2. The Judge in giving judgment at the trial, says: - "The Plaintiff admits that previous to the execution of the mortgage deed an account was produced before him, and that Uma Parshad, his diwan, stated that a certain sum was due. Mir Ghazafar Husain, a well-known talukdar and a man of ability, had also been requested by the Plaintiff to examine the account, and the Plaintiff has deposed that he relied on him. A draft of the deed was prepared only after the accounts had been produced; and the Plaintiff says, moreover, that "it was discussed for some fifteen days, and altered."" In another part of his judgment he says: - "The Defendants have not produced clear proof that Plaintiff entered into a special agreement about interest, nor that he authorized them to include other debts in the mortgage deed, or to appropriate payments on account of decrees to the liquidation of other claims; but it is only reasonable to assume that when the Defendants were entering into such a heavy transaction with the Plaintiff, they

would make a general settlement of their claims, and not leave small, or comparatively small, debts outstanding." It appears to their Lordships that, putting a correct construction upon the deed, and taking the evidence which was adduced, and the findings of the learned Judge, there is no reason to suppose that there was any fraud or deceit on the part of the Defendants, or that there was any mutual mistake of the parties as to the amount which was stated as the sum for which the security was to be given. 3. Under these circumstances, their Lordships are of opinion that the decision of the Judge who tried the case in the first instance, and the decree of the Judicial Commissioner who affirmed that decision, are correct, and they will, therefore, humbly advise Her Majesty that the judgment below be affirmed, and that the appeal be dismissed, the Appellant paying the costs of the appeal.