Privy Council Appeal No. 134 *of* 1929.
Patna Appeals Nos. 28 *and* 30 *of* 1928.

Thakurain Tara Kumari - - - - - - *Appellant*

v.

Maharaja Chandra Mauleshwar Prasad Singh Bahadur - *Respondent*

Maharaja Chandra Mauleshwar Prasad Singh Bahadur - - *Appellant*

v.

Thakurain Tara Kumari - - - - - - *Respondent*

(*Consolidated Appeals.*)

FROM

THE HIGH COURT OF JUDICATURE AT PATNA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 31ST JULY, 1931.

Present at the Hearing :

LORD TOMLIN.
SIR GEORGE LOWNDES.
SIR DINSHAH MULLA.

[*Delivered by* SIR GEORGE LOWNDES.]

These are consolidated appeals from a decree of the High Court of Judicature at Patna. The principal appeal is that of Thakurain Tara Kumari, who will be referred to in this judgment as the appellant. She is a *purdanashin* lady, the widow of Thakur Ram Narain Singh, who was in his life time the owner of an impartible estate known as Taluka Telwar. On her husband's death without issue in 1905, she was entitled to succeed to the estate, but was ousted by one Chatterbhuj Narayan Singh, who claimed to be a co-parcener of her husband.

By a deed dated the 16th September, 1906, she sold to the then Maharaja of Gidhaur an eight annas share of the estate. the object of the sale, as declared by the deed, being to obtain funds to recover the property from Chatterbhuj and to discharge existing encumbrances upon it. The consideration money for the sale was the sum of Rs. 50,000, of which some Rs. 47,000

was to be applied by the Maharaja in payment of the encumbrances and the balance, amounting to Rs. 2,542, was to remain on deposit with him, the appellant being entitled to draw upon it "to defray the expenses of cases, etc." The appellant does not admit the validity of this sale, but it is not in any way in issue in the present proceedings.

Litigation ensued with Chatterbhuj, every thing being done, and all the necessary funds being supplied, by the Maharaja. Two separate suits were filed, one in the name of the appellant and the other in the name of the Maharaja, the latter being joined as a *pro forma* defendant to the appellant's suit and *vice versa*. Each claimed possession of a moiety of the estate. The plaintiffs succeeded in their suits before the Subordinate Judge, but the decrees were reversed on appeal to the High Court. Eventually, on the 13th July, 1915, the Subordinate Judge's decrees were restored by this Board (see 42 I.A. 192), and the plaintiffs obtained possession of the property in November, 1915.

In the meantime the appellant had drawn various sums of money for her expenses from the Maharaja, and other sums had been disbursed by him for the costs of her suit. The appellant alleged that at the time of the sale the Maharaja agreed orally that he would provide her with maintenance during the litigation, and also himself defray all the necessary costs, so that in case of success she would get a clear and unencumbered moiety of the property. This was denied by the Maharaja, who, in turn, alleged an agreement that all advances he might make to the appellant, or for costs, should be repaid by her with interest at 12 per cent. per annum.

On the 17th July, 1910, the appellant executed a mortgage of her remaining moiety of the Telwar estate to the Maharaja to secure the sum of Rs. 12,500, which was recited as being due by her on account of advances, and on the 4th November, 1915, she executed a second mortgage in his favour upon the same property for Rs. 9,500 in respect of further advances made and a small sum in cash.

Upon the 7th August, 1922, the Maharaja instituted in the Court of the Subordinate Judge of Monghyr the suit out of which these appeals arise, for the enforcement of the mortgages. He died during the trial, and his son, the present Maharaja of Gidhaur, was substituted as plaintiff. He will be referred to hereinafter as the respondent.

The suit was dismissed by the Subordinate Judge on the 25th April, 1924, but his decree was set aside by the High Court on the 12th April, 1928, and both sides have appealed to His Majesty in Council.

The Subordinate Judge dealt with the alleged oral agreements at great length, and came to the conclusion that the agreement set up by the appellant was established: that she was, therefore, under no liability to repay the sums she had received for her maintenance or any part of the costs, and that

the mortgages were not binding on her. On the assumption that the agreement alleged by the Maharaja was proved he was still of opinion that the mortgages could not stand. He had no doubt that the appellant was a *purdanashin* lady, which the Maharaja had denied; he held upon the authorities that the burden was upon the plaintiff to prove the fairness of the transaction, that the appellant executed the mortgages with full understanding of their nature and effect, and that she had independent legal advice, and he came to the conclusion that none of these requirements were fulfilled. He at the same time disbelieved the appellant's story that she was told the documents were only leases.

The judgment of the High Court was delivered by Das J., his colleague, Kalnant Sahay J., concurring. The learned Judge held that the oral agreement, which the Subordinate Judge had affirmed, was not proved, and that the appellant was liable to repay all moneys advanced to her by the Maharaja, together with half the costs of the litigation. He agreed with the Subordinate Judge that the appellant was a *purdanashin*, and that she was entitled to the protection which the law in India accords to ladies in that position. He was satisfied that the mortgage deeds were read over and explained to her, and that she understood that she was mortgaging her moiety of the estate to secure moneys advanced to her or paid on her account by the Maharaja, but he was equally satisfied that the accounts upon which the mortgages were based had not been explained to her, and that various items were included in them for which she ought not to be held liable. These were dealt with in detail in the judgment, and will be referred to more particularly hereafter.

The conclusion to which the learned Judges of the High Court came was that the mortgages should be upheld, but that the accounts should be reopened and the case was accordingly remanded to the lower Court for this purpose.

Their Lordships find themselves substantially in agreement with the greater part of the High Court's judgment. They have no doubt that the oral agreement alleged by the appellant was not proved, and that she was liable to repay the maintenance advances and half the costs of the litigation. They also think that the appellant knew the general nature of the documents she was signing. Appended to each is a statement, which is admitted to be in her handwriting, that she had executed "this mortgage bond" for, in the one case Rs. 12,500, and in the other for Rs. 9,500 and that the contents had been read over and explained to her. Their Lordships also agree as to the accounts, and as to the various items to which Das J., refers as improperly debited to her.

The only difficulty is as to the conclusion to which he and his learned colleague came to on the facts. If there was nothing more in the case than that the appellant intended to mortgage her property for debts which she knew to be owing, though she

had no accurate knowledge of the items or the amount due, it might be that the decision of the High Court would be right, more especially if, as their Lordships are told, the result of an adverse decision in the present case would be that the real debts, apart from the mortgages, would be time-barred ; but if knowledge had been kept from her by the creditor, if there was any ground for suspicion that he was over-reaching her, if she had no independent advice and the relations between them were such as to suggest that they were not on equal terms, it would be impossible for a Court to affirm with any certainty, that had she known the full truth, as she was entitled to know it, she would have completed the transaction. It would only be upon this hypothesis that the lady could be held bound by the mortgages, though not by the accounts. It is, no doubt, impossible to lay down any hard and fast rule for such cases, each must depend upon its own facts, and the dividing line may often be difficult to draw.

There is no doubt, their Lordships think, as to the principles to be applied. They are not merely deductions from the law as to undue influence which finds a place in section 16 of the Contract Act, as has been suggested by counsel for the respondent. They are founded upon the wider basis of equity and good conscience which have always been pillars of the administration of justice in India.

Their Lordships think it unnecessary to go through the long tale of authorities upon which the Subordinate Judge founded this part of his judgment. The doctrine is, they think, sufficiently summarized by Lord Sumner in *Farid-un-nisa* v. *Mukhtar Ahmad*, 52 I.A. 343, a decision which was not available to the Subordinate Judge, and is not referred to by the High Court. There undue influence, though pleaded, was negatived. The document, in that case a *wakf-nama*, was read over and explained to the lady, but in what terms the explanation was given the evidence did not disclose, and its sufficiency was the real issue in the appeal. The test laid down is that " the disposition made must be substantially understood, and must really be the mental act, as its execution is the physical act of the person who makes it." The judgment is clear that it is for the party setting up the deed of a *purdanashin* lady to satisfy the Court that it has been not only explained to, but understood by her. If the explanation has been partial or erroneous, or has not been given at all " the question will then arise, as it arises where there has been no independent legal advice, whether if proper information had been given, it would have affected the mind of the executant in completing the deed." Lastly it is laid down that the Court must consider " the whole history of the parties " in order to ascertain whther the deed was the free and intelligent act of the executant."

Their Lordships think that if this judgment had been in the minds of the High Court when they were considering this case they might not have come to the determination that they did.

Here the mortgages were no doubt read and explained to the appellant, but there is nothing to show the nature of the explanation. All that their Lordships know is that the person who read and explained the deeds was one Sunder Lal, who, though an old servant of the Telwar estate, was admittedly in the Maharaja's pay, and was a witness on his behalf. Both the Courts in India have characterized him as untrustworthy, yet his was the only "independent" advice which the appellant had.

The history of the parties has already been indicated. The Maharaja clearly was the dominating personality. He had purchased a somewhat speculative half of the appellant's estate. It was he who launched, managed and financed the litigation; it was he who supported the appellant through ten years of poverty and anxiety; it was he who had the mortgages prepared; it was at his house that they were executed. The only man to whom the appellant could turn for advice was in his service. The lady was young and friendless. At the time when she sold the half of her estate to the Maharaja she was possibly 19, but probably younger.

Turning next to the debts recited in the mortgages and the items which the High Court have criticized, their Lordships cannot but think that they are better evidence of the astuteness of the Maharaja than of his sense of fair dealing.

He had retained on deposit out of the purchase money in 1906 a sum of Rs. 2,542, but no credit is given for this sum in either of the mortgages. In the first mortgage he treats the appellant as liable to him for a sum of Rs. 1,800, which was already time-barred, and debits her with Rs. 4,000, the security given on her appeal to His Majesty in Council, though on the two appeals which were consolidated a deposit of only Rs. 5,000 was required. The sum overcharged in respect of these items amounts to nearly Rs. 6,000 out of the Rs. 12,500 which the mortgage acknowledged to be due and purported to secure on the appellant's property.

The second mortgage of November, 1915, is in no better case. All the items in the previous mortgage are recited and acknowledged: additional sums amounting to no less than Rs. 4,199, which the High Court held to have been then time-barred, are debited, and interest is charged at the rate of 18 per cent. per annum in some cases, and at 24 per cent. in others, though, according even to the Maharaja's own evidence, the agreement was for 12 per cent. only.

It was contended for the respondent that the items making up the Rs. 4,199 should not be treated as simple contract debts to which the three years' rule of limitation applied (see art. 57 of the first schedule to Act IX of 1908), but should be regarded as repayable only when the litigation over the estate was finally concluded; but there is nothing to show that this was the agreement between the parties, and their Lordships have no hesitation in accepting the High Court's finding that these items were barred.

It was also pointed out with reference to the accounts generally that statements taken from the Maharaja's books had been furnished to the appellant before the execution of the deeds, and that they had been signed by her. But this clearly was not sufficient to discharge the burden of full disclosure which lay upon the mortgagee. Their Lordships can hardly think that such statements would convey anything to a lady in the appellant's position, and they cannot hold her bound by them.

It is upon the facts summarized as above, that their Lordships are called upon to review the decision of the High Court that the mortgages were good and effective securities for whatever sums might upon proper accounts being taken, be found due by the appellant. She was, no doubt, justly indebted to the Maharaja, though probably for little more than half the amount she had been made to acknowledge. If she had understood this at the time the deeds were placed before her for execution, it is hardly likely that she would have signed them as they stood. If she had realized the nature of the overcharges which the Maharaja was foisting upon her she might, in their Lordships' opinion, well have refused to mortgage her estate to him at all. If she had had competent advice she might have thought it unnecessary to pledge the whole for the smaller indebtedness, or might have made an effort, at all events in November, 1915, when the litigation was over and the property in her possession, to obtain the money on less onerous terms in some other quarter. It was not for the Courts to make a new agreement for her. They could only uphold the mortgages on the terms contained in the deeds if they were satisfied that with full knowledge of the facts and with the assistance of a competent adviser she would still have completed the transactions subject merely to the ascertainment of the sums legally due from her. Having regard to the nature and extent of the overcharges, to the defenceless position of the appellant and to her relations with the Maharaja, their Lordships are not so satisfied They think that on the facts of this case the mortgages were not binding upon her, and that the suit for their enforcement was rightly dismissed by the Subordinate Judge.

Upon the conclusion to which their Lordships have come, it is not material to consider the cross-appeal of the respondent. He objected only to the form of the account which the High Court ordered to be taken, and this order falls with the dismissal of the suit.

Their Lordships cannot conclude their judgment without referring to the delay which took place in bringing the appeal to a hearing in the High Court. The judgment of the Subordinate Judge was given on the 25th April, 1924, and it was not till nearly four years later that the appeal was decided. No explanation of this great delay can be suggested by counsel ; the record was not a particularly heavy one, and no substitution of parties was necessitated after April, 1924. It may be that the work of the

Patna High Court is congested, but their Lordships feel that if this is so, some steps ought to be taken to remedy the evil, and to ensure a more speedy hearing of appeals in that Court. They can only regret that it should have taken nearly nine years for this case to reach a final conclusion.

For the reasons given their Lordships will humbly advise His Majesty that the appeal of Thakurain Tara Kumari should be allowed, that the preliminary decree passed by the High Court should be set aside, and the decree of the Subordinate Judge restored ; and that the cross-appeal of the respondent should be dismissed. The respondent must pay the costs of the appellant in the High Court and before this Board.

In the Privy Council.

THAKURAIN TARA KUMARI

v.

MAHARAJA CHANDRA MAULESHWAR PRASAD SINGH BAHADUR.

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DELIVERED BY SIR GEORGE LOWNDES

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