

Privy Council Appeal No. 123 of 1930.
Patna Appeal No. 29 of 1928.

Sheoprasan Singh - - - - - *Appellant*

v.

Munshi Narsingh Sahay and others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT PATNA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL DELIVERED THE 3RD MARCH, 1932.

Present at the Hearing :

LORD RUSSELL OF KILLOWEN.

LORD SALVESEN.

SIR DINSHAH MULLA.

[*Delivered by* LORD SALVESEN.]

This is an appeal from a Judgment and Decree of the High Court of Judicature at Patna dated 29th May, 1928, reversing a Judgment and Decree of the Second Subordinate Judge of District Arrah, dated the 2nd August, 1924, and decreeing in full the Plaintiff-Respondent's suit to recover Rs. 39,855 annas five pies six secured by a mortgage bond executed in favour of his *benamdar* on behalf of the Defendant-Respondent Mussamat Dhanwanti Kuer on the 3rd March, 1908.

The only compearing parties at the trial were the appellant who under certain deeds which it is not necessary to refer to has acquired all the rights of Dhanwanti Kuer in the mortgaged properties, and the plaintiff-respondent (hereinafter referred to as the respondent).

The facts of the case may be shortly summarised—Dhanwanti Kuer is the widow of one Sukhdeo Singh, who died prior to the middle of the year 1900. leaving three unmarried daughters. His three brothers Jaideo, Namdeo and Sahdeo survived him, but

the two latter had already lost their interest in the family property. After Sukhdeo's death his widow applied for mutation of her name in place of her husband in certain properties, but was opposed by Jaideo. The dispute between them was finally settled in terms of an *ekrarnama* (an agreement) executed in July, 1900. This document proceeds on the narrative that the widow Dhanwanti Kuer had three unmarried daughters and that she would require to take a loan to provide for the expenses of their respective marriages which could not be effected unless her name was registered in the Government Office in respect of the estate left by her husband. The deed accordingly (para. 4) provides that she should get her name registered in the Khas properties of Sukhdeo Singh therein specified. Para. 5 provides for certain debts being borne equally by Jaideo and Dhanwanti. The deed then proceeds :

" 6. If for payment of the previous debts, necessity may arise to execute fresh deeds bearing cheap interest, then we Musammat Dhanwanti Kuer and Babu Jaideo Singh shall jointly or severally execute the same as required. If for payment of road-cess which may be jointly payable, or for any decretal money, I, Musammat Dhanwanti Kuer, may not get an opportunity to execute any deed with a view to mortgage both the shares, and if Babu Jaideo Singh makes payment by executing any deed and by mortgaging both the shares, then that deed shall be binding on me, Musammat Dhanwanti Kuer as if it was executed by me personally.

" 7. In the event of the income of the properties with respect to which the name of me, the executant Musammat Dhanwanti Kuer will be recorded, being insufficient to meet the expenses at the occasion of my daughter's marriage, I shall be competent to take loan by Rehan or mortgage of the whole or part of my Milkiat property and to perform the marriage. But it will be incumbent on me first to ask Babu Jaideo Singh for a loan and should he fail to advance the loan from his own fund or to obtain from others, I shall borrow money from other Mahajans excluding the share-holders and Pattidars of Mauza Raghbir Garh Koindi, and to this Babu Jaideo Singh shall not raise any objection.

" 13. Save and except the stipulations laid down in paragraphs 6 and 7 above, I, Musammat Dhanwanti Kuar, shall have no right at all to create any encumbrance on the property or to execute any deed of sale conditional sale or Patta or Rehan deed with regard to the same, and if I do so, it shall be treated as null and void."

The deed further provides that on the widow's death the properties standing in her name are to devolve on Sahdeo Singh and Namdeo Singh—that the entire management of the properties should be vested in Jaideo, that certain payments for maintenance should be made to Namdeo and Sahdeo and that the widow should receive a cash payment of Rs. 150 and certain quantities of cereals and oils yearly. After all expenses were paid (including guests, visitors, &c.) the balance of revenue was to be paid over to the widow. The annual income of the property is variously estimated at from Rs. 1000 to Rs. 3000. The High Court in their judgment have characterised this deed as an unfair one, and it certainly appears to have been made more in the interests of Jaideo and his brothers than of the widow. The widow apparently also took this view, for in a suit against her the judgment in which

was delivered on 20th March, 1913, she pleaded that the *ekrarnama* was executed by her without any knowledge of its contents or understanding its effect. An issue as to this was duly framed and went to trial, but was decided against her by the Subordinate Judge. She herself gave evidence and is described in the judgment as "an ignorant lady, but very clever lady as a perusal of her evidence will show." This Judgment was confirmed on appeal by the additional district Judge.

In the present case the *ekrarnama* is founded on by the appellant and not challenged by the widow, who at first made common cause with him, although she later dropped out of the suit. Whatever its effect it must be held to be binding on her and to have conferred on her only a limited power to mortgage the properties standing in her name.

The evidence is entirely silent as to the management by Jaideo of the properties and no accounts have been produced. It is significant, however, that in the *ekrarnama* there is a statement that Jaideo was in bad health and had therefore with Dhanwanti's approval appointed a manager. Para. 17 contains a clause in the following terms :—

"When I Babu Jaideo Singh fail to manage the works of Musammat Dhanwanti Kuer as regards making collection of rent and settlement of lands as also looking after other business in courts, civil or criminal, I shall make over charge of all the duties to the said Musammat. When Babu Jaideo Singh ceases to have any connection with the works of me, the executant Musammat's share I will (torn) look after my business personally or through any servant, or *Karpardaz* in accordance with the terms of this deed (torn)."

This serves to explain the next important document in the case. viz., the power of attorney executed by Dhanwanti in favour of one Sahdeo Pande on 11th January, 1904. By this time Jaideo must either have died or devolved the management of the estates on her. It sets forth that numerous law suits were pending against her which she as a *Pardanashin* lady was quite unable to look after and that she had accordingly appointed Sahdeo Pande as her *am-mukhtar*. As the mortgage on which the respondent sues was actually executed by Sahdeo Pande on behalf of the mortgagor this is the first document challenged by the appellant.

The power of attorney which is briefly described in the concluding sentence as a general power of attorney is expressed in the widest possible terms. *Inter alia* it gives power to mortgage the granter's properties and even to sell them. It is certainly a document which could not bind the executant unless she knew and understood thoroughly its meaning and effect—the onus of proving which is primarily on the respondent. On the other hand it bears to be executed by the pen of her father on her behalf in presence of two witnesses and when presented for registration on 13th January by Dhanwanti Kuer herself the Sub-Registrar's note states that she affixed her thumb mark in his presence, her father being present and identifying her to the Sub-Registrar, who authenticated same in terms of sec. 33. Act III of 1877.

There is no evidence as to its being read over and explained to her—her father being dead at the date of the trial: but again it is not said that the general powers given are unusual in the case of a *Pardanashin* lady, and she herself has not come forward to give evidence. In these circumstances there is at least *prima facie* evidence of her consenting to its terms, which might have been rebutted by her own testimony, but it is unnecessary to consider this point by itself in view of the conclusion that their Lordships have reached with regard to the only act of the *am-mukhtar*, which is challenged, viz., his execution of the mortgage deed, which he signed on her behalf.

Before dealing with the actual execution of this deed it is desirable to consider the circumstances which led up to it. One daughter was still unmarried, although a marriage had evidently been arranged. The appellant led some evidence to show that two daughters had been married before the date of the mortgage deed, which is March, 1908, but their Lordships agree with the High Court in holding that this evidence, which is very vague in itself, has been completely displaced by the other evidence in the case, including that of Jagarnath, the man to whom the second daughter was married, who states that the date was February, 1909, and who was not cross-examined on this point. He was not called by the respondent and it is interesting to note that Sahdeo Pande, whose actings are now challenged, was not called as a witness and was at the date of the trial *Mukhtar-am* of the widow. Besides, it is incredible that a mortgage which bears to be granted because of the necessity for Dhanwanti Kuer performing the marriage of her daughter should have been signed if that marriage had long before taken place. Moreover, the estate itself was in jeopardy as a sale had already been proclaimed on 15th January, 1908, in satisfaction of a decree for costs of partition due to the Government. In these circumstances it became necessary to have recourse to a moneylender as the only means of raising the money urgently required.

The mortgage bond itself was signed for the widow by Sahdeo Pande on 3rd March, 1908, and was presented for registration and duly registered on the 4th. It is common ground that the money was duly paid to Sahdeo and the High Court have held that the money was applied in meeting the Government claim of Rs. 799 and Rs. 1000 for marriage expenses. The former might be inferred from the fact that the estate was not brought to sale and the latter from the fact that the marriage of the second daughter duly took place and that her mother performed the usual ceremonies. The bond itself is a simple one, easily understood, and in the circumstances no course appears to have been open to Dhanwanti, but to borrow, and her knowledge might easily be inferred from the facts of the case. These are in complete contrast to the facts dealt with in the cases to which we were referred by the appellant's counsel (52 Ind. App., p. 342. 58 Ind. App., p. 451. 29 Ind. App., p. 127). In all these cases the *Pardanashin* lady had signed

documents by which she denuded herself of her estate for no consideration at all or for only partial consideration. In all of them, too, the lady herself gave evidence that had she known the effect of what she purported to do by the deeds there considered she would have refused to sign. Here the mortgage was granted for full consideration under stress of circumstances which necessitated a loan by which alone the money necessary to save the estate from sale and provide the necessary funds for the projected marriage could be obtained, and although oral evidence was adduced by the respondent that he made inquiry through Raghunath Sahai of the widow as to the necessity of the loan before it was granted and of her receipt of the money thereafter the lady herself chose not to go into the witness-box.

The matter, however, does not stop there. On 22nd March, 1908, Dhanwanti signed another deed called a *Thikka Patta* in which it was narrated that one object of doing so was to provide for the due payment of interest on the loan from the respondent the exact annual amount of which is set forth. This deed is signed by Dhanwanti herself (she had now become literate) after, as the execution bears, it had been read over to her and it was duly registered by herself after identification by Sahdeo Pande. Thereafter the duty of paying the interest was laid on the *thikkadar* Jadunath the balance of the stipulated rent only being receivable by her—viz., Rs. 253. In point of fact, Jadunath did pay a sum of Rs. 725 some two years later of which receipt is duly acknowledged on the back of the bond. Why he did not continue to pay the interest is not explained nor does it concern the respondent.

Still further on 17th December, 1915, Dhanwanti executed a Rehan Deed in favour of her son-in-law, Jagarnath Singh. In this deed she narrates that she had borrowed, among other sums, Rs. 1799 from the respondent and also that payment of the debt due to him had not been made, although there were pressing demands for same and makes provision for paying same out of a loan from Jagarnath of Rs. 15,000. This deed bears to be signed by herself after being read over by the scribe.

These deeds constitute admissions under her own hand of the constitution and subsistence of the debt due by Dhanwanti to the respondent, who is not a party to either. These deeds therefore involve knowledge by her of the existence of the Power of Attorney and understanding by her of its contents. Their Lordships are not impressed by the view of the Subordinate Judge who without a tittle of evidence to proceed on sets them aside as not in *bona fide* and concocted apparently by a conspiracy amongst all the parties to furnish proof (which might be said to be otherwise wanting) to support the respondent's claim. They agree with the Judges of the High Court that they furnish complete evidence that Dhanwanti Kuer had knowledge from the first of the mortgage bond granted in favour of the Respondent and of all its essential terms, including the rate of interest

stipulated which although apparently exorbitant, has been held by both courts to be the usual rate of interest payable in that district on similar transactions.

The only other point argued was whether the mortgage was *ultra vires* of the granter, in view of the *ekrarnama* which was previously narrated. On this point the loan so far as required for payment of marriage expenses was expressly authorised by para. 7 already quoted while it is clearly implied in para. 6 that money might be borrowed to meet Government claims. Even if it had not been so the loan as regards the Rs. 799 was absolutely necessary to save the estate from a disastrous sale.

For these reasons their Lordships are of opinion that the judgment of the High Court was right and they will humbly advise His Majesty that the appeal should be dismissed with costs.

1840

In the Privy Council.

SHEOPRASAN SINGH

v.

MUNSHI NARSINGH SAHAY AND OTHERS.

DELIVERED BY LORD SALVESEN.

Printed by

Harrison & Sons, Ltd., St. Martin's Lane, W. C. 2.

1932.