Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Annoda Mohini Roy Chowdhry v. *Bhuban Mohim Debi and Another* v. *Bhuban Mohini Debi and Another, from the High Court of Judicature at Fort William in Bengal; delivered* 23*rd March* 1901.

Present at the Hearing:

LORD HOBHOUSE.
LORD DAVEY.
LORD LINDLEY.
SIR RICHARD COUCH.
SIR FORD NORTH.

[*Delivered by Lord Hobhouse.*]

The question in this Appeal is whether a deed of mortgage which the Respondent, Bhuban Mohini Debi, one of the Defendants in the suit, executed to the Plaintiff now Appellant, was so executed with due understanding of its effect; the Defendant being a purdanashin lady. The Subordinate Judge held that the Defendant fully understood the deed. On Appeal the High Court held the contrary view, and dismissed the mortgagee's suit as against her. From that decision he now appeals.

The position of the parties is one of some complexity. The Defendant Bhuban is the daughter of Mohesh Chunder who appears to have been possessed of considerable property. In June 1874 he executed a deed for the purpose of making provision for her maintenance. "You "have been married to a Kulin, Sudarsan "Chunder Banerji, who has no property by

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" means of which you may be maintained. " Consequently, in my lifetime I give you for " your maintenance two mehals, kismut Iswar- " pore and kismut Shibpore, appertaining to " turuf Barra 3½ annas of my ancestral zemin- " dari of 7 annas share of pergunnah Kundi, " bearing No. 163 of the towzi of the Collectorate " of zillah Rungpore, recently specially registered " in No. 1 on separate account being opened and " bearing the sudder-jumma of Rs. 9,836. 13. 1. 2. " On my death, you shall get into possession of " the two mehals and possess and enjoy the same " with great felicity." Then follow provisions on which questions may be raised as to the extent of the interest given to Bhuban; but these questions do not arise in this suit. She has at least an ownership for life, with a claim to be indemnified against the Government Jumma by the remainder of the zemindari. These two mehals are the subject of the present Appeal.

In September 1884 Mohesh died. He made a will which is not in the Record, but by recitals in subsequent deeds its effect is shown. He gave several mouzas to his wife Jagadiswari, Bhuban's mother, for her maintenance; he reaffirmed his gift of Iswarpore and Shibpore to Bhuban; he gave the residue of his property to Kali Ranjan the son of Sudarsan and Bhuban, and then a minor; and he appointed Jagadiswari and Sudarsan to be executors.

It appears that the testator contracted large debts, for the discharge of which he sold parts of his estate, and other debts, either contracted by himself or arising on account of revenue claims, became due from the estate. The executors gave bonds to secure those debts on behalf of themselves and Kali Ranjan. On the 19th September 1887 they executed a mortgage to the Plaintiff for Rs. 8,000 for the purpose of paying off the prior debts. The mortgage was

expressed to be made by: firstly, Kali Ranjan through the executors, secondly the executors personally, and thirdly Bhuban. All make themselves personally liable for this advance. The executors mortgage the whole estate, Jagadiswari mortgages her life interests under the will, and Bhuban mortgages Shibpore in which she is described as having an absolute interest by deed of gift. The deed was registered the next day with due formalities as regards the two ladies.

At the same time the executors sold a further portion of the zemindari to pay off an additional amount of debt due from Mohesh. The purchaser is called Rai Saheb. He required some security against disturbance of his title by Kali Ranjan when he should attain majority, and a deed called a jamin-nama was given to him. It is not in the Record, but is described by Bhuban (page 173) as pledging one of her properties and some properties of Jagadiswari for the required security.

On the 5th June 1889 the executors borrowed on mortgage a further sum of Rs. 13,000, nominally from one Chuckerbutty, but really from the Plaintiff whose agent he was. The mortgagors were the same as those of 1887: and the tenor of the deed is the same, only with the addition that Bhuban purports to charge her mouza Iswarpore as well as Shibpore. The deed was registered with due formalities.

On the 31st July 1891 the Plaintiff obtained a decree against the mortgagors of 1887 for realisation of that mortgage debt. This was obtained in the absence of the Defendants.

On the 22nd November 1891 was executed the mortgage now sued on. The mortgagors are the same as in 1887 and 1889. The deed recites the decree and the mortgage of 1889 and another claim against the estate and a fresh borrowing of

Rs. 32,000 by the mortgagors collectively to pay off those demands. The properties given for security are specified in detail, and among them are mouzas Iswarpore and Shibpore, which are stated to be a legacy to Bhuban from her father. The deed was registered in the following December with due formalities.

There is no question in this Appeal whether the mortgage is good as against the testator's estate vested in Kali Ranjan. Nor is there any as regards Jagadiswari's life interest, because she died pending her appeal to the High Court, and her interest died with her. But before the Subordinate Judge both she and Bhuban, while not denying their execution of the deed in suit, put in separate defences, each contending that she signed it without knowing what it contained, and admitted its execution before the Registrar without comprehending the real nature of the transaction.

The Subordinate Judge did not keep the two defences separate; he mixed them together in one issue, and in his judgment he appears to apply to both ladies evidence which applies to either. The fifth issue is whether Jagadiswari and Bhuban fully understood the contents of the bond? And that he finds in the affirmative against both without distinction. That was a course very likely to cause error.

In the first place there is direct evidence affecting Jagadiswari which does not affect Bhuban. In the next place the positions of the two in relation to the estate were quite different. Jagadiswari was executrix, and she took large beneficial interests under the will. She had good reason to intervene actively in the affairs of the estate, and she appears to have done so. Bhuban was not an executrix: though there is evidence from herself and her husband that he and her mother told her that she was an executrix or a

guardian to her son, and that on that account she was told to sign papers, which she did without knowing what they were. Her property came to her independently of the will; and her only pecuniary interest in the estate was to preserve the security which it afforded to her against the Government jumma. She was not liable for any of the debts secured by the deeds until she made herself liable by the deeds themselves. Both mother and daughter were illiterate, being unable to read or write though they could make their signatures. But there is evidence showing that Jagadiswari was an efficient woman of business. There is no such evidence as regards Bhuban. On the contrary, so far as the evidence goes it leads to the inference that, at least in the affairs of the estate, she was in the habit of doing as her husband bid her; and that he was a man of violent temper of whom she was afraid to ask explanations.

The High Court, after saying that the mortgage may have been quite valid as against the other parties, conclude their judgment as follows: "It is we think a case in which there "should have been clear evidence of an explana- "tion of the deed to Bhuban Mohini in so far as "it affected her interest as distinct from the "interests of the other executants. There is "really no evidence worth alluding to of any "explanation to her, much less an explanation "of that description, and we are very far from "satisfied that she understood she was mortgaging "her property" (Rec. p. 205).

Their Lordships have been invited by the Plaintiff's Counsel, who have most carefully sifted the evidence, to prefer the conclusions of the Subordinate Judge, but they are unable to do so. The Subordinate Judge says (p. 186) that the witnesses Kali Mohun and Bhairub satisfactorily bear out that Jagadiswari and

Bhuban had the bond for Rs. 13,000 fully explained to them before they signed it and admitted its execution. Certainly if the Plaintiff showed that the mortgage of 1889 had been fully explained to Bhuban he would gain an important step. But neither of these witnesses says anything about the execution of the deed, nor does either say that there was explanation given at that or any other time.

Bhairub was a clerk in the Registry Office, who was deputed to verify the signatures of the women. So far from explaining the deed to them, he cannot even remember reading it; thinks he did not, because it is not the Registrar's business; but is shaken by Kali Mohun's assertion that he did read.

Kali Mohun who was present on the occasion of registration says that Bhairub read the deed; and there is a note endorsed on it and signed by Kali Mohun and Sudarsan to this effect (p. 55). "We know these two executants "of the deed who are present, and they have this "day signed with their own hand their respective "names on this deed in our presence." (Those signatures are not the execution of the deed, but the names of the ladies put to the note endorsed for verifying the execution.) "They acknowledge "to have made those signatures and to know all "the terms on the document being read." That is all the evidence to show that Bhuban understood the deed of 1889.

Who was the author of the note so relied on does not appear. It is quite distinct from the acknowledgment of execution signed by the ladies. How is it evidence against them? Bhairub does not support it. Kali Mohun does not support it except as to the reading of the deed. In his cross-examination he says that the deed was not read and explained. Sudarsan's testimony is of very little weight on whichever

side it may be given, but so far as it goes he denies the reading. Supposing however that the note could be taken as proof that the Registrar had done something which was out of his province and of which he has no memory, there remains a wide difference between reading out a deed neither short nor simple, and explaining its effect. In fact nobody could explain its effect upon Bhuban without knowing her position with respect to the various parts of the property mortgaged. This evidence, though relied on by the First Court and much urged at the Bar, does not go any way at all in support of the Plaintiff's case.

The learned Judge's reasons for thinking that the ladies understood the deed of 1891 (Rec. p. 187) are of the same kind. He fastens on an endorsement which says "the Commissioner "having read out the deed they admitted to "have signed the deed" (Rec. p. 86). This endorsement is signed by two witnesses Ashutosh and Pitambur, both in the service of the Defendants, who both say that the deed was not read. But the endorsement, says the learned Judge, gives the lie direct to these two witnesses. That is all. Nobody alleges that the deed was explained on this occasion. The learned Judge then refers to one or two other circumstances but they affect Jagadiswari exclusively.

The evidence of explanation which was pressed at the Bar is that of Digambur a pleader employed by the Plaintiffs (Rec. p. 90). He says that he paid so much of the advance as was payable in cash, R. 2314, to some officer of the Defendants to be made over to Jagadiswari and Bhuban. He could see into the room where the ladies were sitting and saw the officer put the notes and cash into Jagadiswari's hands. Then he says "Ashutosh read out the deed and I asked "Jagadiswari and Bhuban Mohini, 'Have you "'understood the mortgage, &c., mentioned in

" ' this ? ' Upon that Jagadiswari said, ' This
" ' matter has been going on for a long time,
" ' we will know and understand.' Bhuban
" Mohini merely nodded her head in token of
" her consent. They were not asked whether
" they had understood what was said about the
" previous debts." In cross-examination he says
" I told Ashu to read out the deed. I cannot
" say why I did not read it myself. The deed
" was read out fluently. He did not stop any-
" where at the time of reading it. After it had
" been read out, I asked ' Have you understood
" it ? ' And immediately after they had to sign
" it." Bhuban was not asked whether she knew that she was making her property and herself liable for debts not due from her. All that was done by way of explanation was to read the deed fluently; gur-gur is the vernacular term, and that is explained by another witness who was present to mean reading in the usual way without stopping anywhere (Rec. p. 105.) That is calculated to puzzle more competent persons than an illiterate purdanashin. Jagadiswari may very likely have known about the whole affair. But Bhuban's nod of the head does not go far to show that she knew what liabilities she was undertaking.

Sir William Rattigan laid great stress on the decree of July 1891, urging that Bhuban must have known of a decree charging her property and therefore of the loan which released it. The decree was made *ex parte*, and there is nothing to show that Bhuban had ever appeared to the suit. The matter is not discussed in the Courts below, who would be more familiar than their Lordships can be with the probabilities of the case; whether a lady in Bhuban's position might not easily be left in ignorance of an *ex parte* decree until actual execution proceedings were taken against her. Their Lordships cannot act on the speculation

that she must have known that of which it is not shown that any direct information was conveyed to her. It is not at all certain that Sudarsan or Jagadiswari would be anxious to keep her well informed of the increasing dangers to which their management of the family affairs and their resort to her aid were exposing her.

Agreeing as they do with the High Court their Lordships will humbly advise His Majesty to dismiss the Appeal. As the Respondent has not appeared there will be no costs.