

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Mussummat Shambati Koeri and others v. Mussummat Jago Bibi, from the High Court of Judicature at Fort William in Bengal; delivered the 6th June 1902.*

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Present at the Hearing :

LORD MACNAGHTEN.

LORD LINDLEY.

SIR FORD NORTH.

SIR ANDREW SCOBLE.

SIR ARTHUR WILSON.

[*Delivered by Sir Andrew Scoble.*]

This suit was brought by the Plaintiffs and present Appellants, who represent a firm of mahajuns at Ulae in Bengal, to enforce a mortgage bond alleged to have been executed in their favour by the Respondent Mussummat Jago Bibi for the purpose of paying off debts due by her deceased husband. Certain persons, who were purchasers of portions of the property included in the mortgage, were also made parties to the suit, as originally constituted, but it is unnecessary to deal with their position in this Appeal. The Subordinate Judge of Monghyr, who tried the case in the first instance, made a decree in favour of the Plaintiffs, but this was reversed on appeal by the High Court of Bengal, and the present Appeal is against that decision.

The mortgage bond in question bears date the 3rd of July 1883, and purports to be signed on behalf of the Respondent "by the pen of Soonder

“Lal, son-in-law and *am-mokhtar*.” Its registration at the District Registry is endorsed as having been effected by the same Soonder Lal “under a general Power of Attorney No. 7 of 1881 of this office, and execution admitted by “him.” The material issue, in both Courts, was in these terms :—

“Whether the Defendant Jago Bibi executed “the disputed mortgage bond dated 3rd July “1883 for proper consideration to the Plaintiff, “and is she bound by the act of her agent and “son-in-law, Soonder Lal?”

The Respondent Jago Bibi, is a *purda nashin* lady who, on the death of her husband, inherited from him considerable property, including a zemindari and a banking business. There is no doubt that after her husband's death the Respondent, who can neither read nor write, executed a *mokhtarnama* or general power of attorney in favour of her son-in-law Soonder Lal, and that this document was registered at the District Registry of the locality some time in 1881. But this document was not produced in either of the Courts below, and very perfunctory efforts appear to have been made to secure the attendance as a witness of Soonder Lal, in whose possession it was alleged to be. Nor was there any foundation made for putting in the authentic copy of it which was recorded in the District Registry Office. But a copy alleged to have been made by one Chaturbhuj, a clerk in the Plaintiffs' service at the time of the execution of the mortgage-bond, was tendered in evidence, and rejected by the Subordinate Judge; and the only information before their Lordships as to the scope of the *mokhtarnama* is supplied by the statements of some of the Plaintiffs' witnesses, who were allowed (very irregularly) to speak to their recollection of its contents. On the other hand, Jago Bibi stoutly affirmed that, in the

*mokhtarnama* which she gave “there was no authority to borrow money and execute bonds, and sell or mortgage properties. The *mokhtar-nama* was executed for the purpose of collecting rent from villages, and of looking after the affairs.”

But it was contended that the absence of the *mokhtarnama* was of little consequence, as the Respondent personally entered into the transaction with full information of what she was about. The evidence of the Plaintiffs’ witnesses on this point was believed by the Subordinate Judge but was discredited by the High Court. The witnesses were, with one exception, in the service of the Plaintiffs, and persons before whom the Respondent could not appear; and the one witness (Baldeo Narain) who, from his connection with the family, was able to positively identify her, does not “remember whether he went to the house of Jago Bibi at the time when the draft was read out to her,” and is not an attesting witness to the bond. Without accepting in every particular the appreciation by the learned Judges of the High Court of the evidence on this part of the case, their Lordships see no reason to differ from the general conclusion at which they arrived that “though the mortgage bond is said to have been read out to the lady, there is no evidence that it was in any way explained to her, and that she really understood the conditions and effect thereof.”

It was further urged on behalf of the Appellants that the object of the mortgage having been to “liquidate debts owing to various mahajuns on account of the high rate of interest charged by them, by borrowing money at a lower rate of interest” the Respondent had received consideration by the liquidation of these debts. But the only evidence offered on this point consisted of extracts from the Plaintiffs’

own books, and the creditors themselves were not called to support the entries. The Respondent, by her written statement, denied that the debts mentioned in the bond were ever due by her or by her husband, and her evidence to the same effect was not shaken on cross-examination. The Subordinate Judge accepted the Plaintiffs' story as to this part of the case; but the High Court held that "no evidence had been adduced on the part of the Plaintiffs to show that the debts which the mortgage bond states it was necessary to liquidate did as a matter of fact exist; much less that they were debts left by the lady's husband." It is perhaps going too far to say there was no evidence; what there was, was exceedingly incomplete and unsatisfactory.

It is a well-known rule of this Committee that "in the case of deeds and powers executed by *purda nashin* ladies, it is requisite that those who rely upon them should satisfy the Court that they had been explained to and understood by those who execute them" (*Sulisht Lal v. Mussummat Sheobarat Kunwar* L. R. 8 I. A. 39, on p. 43). From the preceding observations it is, in their Lordships' opinion, clear that there is a want of satisfactory evidence of that kind in the present case. They will humbly advise His Majesty that this Appeal ought to be dismissed, and the decree of the High Court confirmed. The Appellants must pay the Respondent's costs of the Appeal, up to and including the lodging of her case.

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