

Hem Chandra Roy Chaudhury - - - - *Appellant*

v.

Suradhani Debya Chaudhurani and others - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM
IN BENGAL

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 23RD MAY, 1940

Present at the Hearing :

LORD THANKERTON

LORD ROMER

SIR GEORGE RANKIN

LORD JUSTICE LUXMOORE

MR. M. R. JAYAKAR

[*Delivered by* SIR GEORGE RANKIN]

The appellant, Hem Chandra Roy Chaudhury, was the first defendant in a suit brought by the first respondent in the Court of the Subordinate Judge at Mymensingh to enforce a mortgage. The suit was filed on the 6th March, 1931, and the mortgage deed (exhibit 1) was dated 18th August, 1918. The property mortgaged thereby was a taluk (Gangaram Rai) numbered 237 in the books of the Mymensingh Collectorate and comprising ten mouzas; also another taluk (Sambhu Chandra Roy) numbered 239 in the same Collectorate and comprising seven mouzas. The mortgage deed had been executed in favour of the plaintiff by two persons as mortgagors—the appellant and his paternal grandmother, an old lady whose name was Sm. Nabin Kishore Chaudhurani.

The appellant had inherited the mortgaged properties, together with other properties, from his father at some date before 1914 while he was yet a minor. The father's will, made in 1891, states that Nabin Kishore, the testator's adoptive mother, had managed and administered his zemindari and other properties during his minority and was efficient in doing all business relating thereto. The appellant in 1913, on attaining majority, executed a trust deed (3rd Falgoon 1320 B.S.) vesting all his properties in her so that she might continue to manage them. Between 1914 and 1917 they had jointly borrowed considerable sums from the Maharaja of Mymensingh on four mortgage deeds. The first

of these mortgages dated in 1914 was paid off by money raised from one Anath Bandhu Guha by means of a mortgage (exhibit S) entered into on 18th March, 1918, a few months before the mortgage in suit. The other three mortgages were paid off by means of the mortgage in suit which was for the sum of Rs.1,20,000—Rs.1,00,423-4-6 due on the three mortgages already mentioned, Rs.4,000 due on a note of hand to the plaintiff (respondent No. 1) and Rs.15,576-11-6 cash advanced. The appellant and his grandmother in 1920 and 1923 had borrowed further sums from Anath Bandhu Guha under two mortgage deeds exhibits R and T.

The properties comprised in the respective mortgages to Anath Bandhu Guha were as follows. His prior mortgage of 18th March, 1918 (exhibit S) comprised four out of the seventeen mouzas mortgaged to the plaintiff. His subsequent mortgage of 1920 (exhibit R) comprised the same seventeen mouzas and his last mortgage of 1923 (exhibit T) comprised in addition to these seventeen mouzas a house and lands known as Bailor House.

Anath had died before suit and the present respondents 2 to 5 were impleaded as his representatives. They were defendants 3 to 6 and may be referred to as the Guha defendants.

Nabin Kishore was impleaded as the second defendant in the suit. She died on 8th September, 1932, before the trial and the appellant was substituted in her place on 13th September, 1932. The time originally allowed by the Subordinate Judge to the defendants for filing written statements was extended by him until 4th June, 1931, on which day the Guha defendants put in a written statement. The appellant was given further time until the 25th. On that day he asked for still more time. The Subordinate Judge gave him two days only, remarking that he had had two and a half months already; also that he had no right to look into the Guha defendants' written statement before filing his own. (This may have meant no more than that he should file his own written statement independently in the first instance.) On the 29th June, Nabin Kishore filed her written statement and on the 6th of July the Guha defendants filed an amended pleading in which for the first time they sought to have their prior and subsequent mortgages enforced in the plaintiff's suit. On the 18th July issues were framed, including an issue as to the sums due on the respective mortgages in favour of the plaintiff and of the Guha defendants. On 29th August an issue, not now of importance, was amended at the instance of Nabin Kishore. After her death in September, 1932, the appellant, who had filed no written statement on his own account, asked leave on 1st November, 1932, to file a new written statement as her representative. He was given leave, but as he applied late, leave was only given on the terms that he could take no fresh ground of defence apart from those already raised by her previous written statement. He filed a written statement on 14th November, 1932, of which paragraphs 5 to 7

setting up an interest of third parties in the mortgaged property was struck out by order of 19th November.

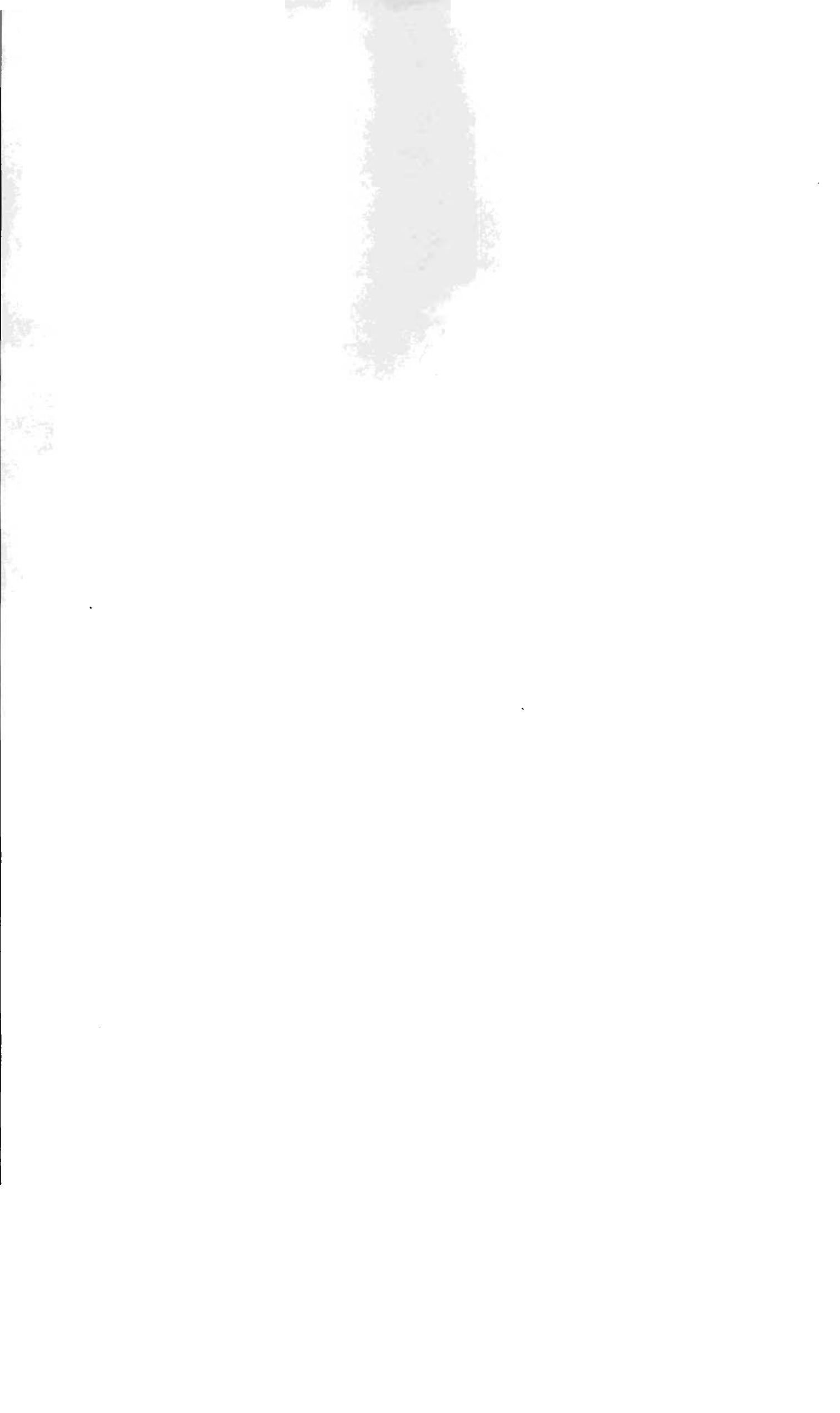
The first and main contention of the appellant throughout has been that Nabin Kishore was a purdanashin lady, that the mortgage deed sued upon was not explained to her, and that for this reason the mortgage is invalid even against him. Both Courts in India held on very convincing evidence that though an old lady, Nabin Kishore had considerable capacity for business; that the deed was read over to her, though it was not explained; that she understood its effect except that she did not understand that she was making herself personally liable to repay the money borrowed from the plaintiff. Neither Court in India appears to have appreciated that if for want of explanation the lady did not understand an important feature of the transaction, it cannot be held that her mind and free consent went with her act in executing the deed. A purdanashin woman is not required to understand every technical detail of a bargain. In the judgment of the Board delivered by Lord Buckmaster in *Sunitabala Debi v. Dhara Sundari Debi Chowdhurani* (1919) L.R. 46, I.A. 272, 278, this is pointed out and the "proper and necessary test" was held to have been applied by the Subordinate Judge who had found "that the lady had sufficient intelligence to understand the relevant and important matters, that she did understand them as they were explained to her, that nothing was concealed and that there was no undue influence or misrepresentation." And in *Farid-un-nisa v. Mukhtar Ahmad* (1925) L.R. 52, I.A. 342, 350, the Board stated the requirement as being "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." Though there may not be "a clear understanding of each detail of a matter which may be greatly involved in technicalities"—to use Lord Buckmaster's words—there may still be an intelligent comprehension of the bargain on the part of the lady. In such a case the bargain is good and is good as a whole. But if a feature of the transaction affecting in a high degree the expediency of her entering into it is not understood by the lady the bargain cannot be divided into parts or otherwise reformed by the Courts so as to uphold certain portions of it while rejecting others. Her answer to a suit upon the deed is not that she has an equitable defence to the enforcement of a certain stipulation but that it is not her deed. The protection extended to a person in her situation is protection against being held bound by a transaction which never had her free and intelligent consent.

Their Lordships must accept the concurrent finding of the Indian Courts that the lady did not understand that she was incurring personal liability for the loan and on this view must dispose of the case on the footing that the mortgage deed did not bind her at all. What defence is that to the appellant? That he had the beneficial interest in the property is agreed, though the trust deed of 1913 is not before the Board. He was competent to mortgage his interest.

No doctrine of the law of India has been indicated to their Lordships which prevents a beneficiary under a trust from dealing with his interest by way of mortgage, though it is true enough that in India such an interest is not technically regarded as an equitable estate. If Nabin Kishore had a life interest in one of the villages, as she would appear from her son's will to have had under her husband's permission to adopt, that in no way affects the present suit. The life interest has come to an end. The mortgage is not being enforced against it, but is good and enforceable against the appellant's interest in the village—an interest which came to him as his father's heir, though subject, it may be, to certain life interests outstanding in his father's mother and widows. The plaintiff's mortgage is plainly enforceable against the appellant, whose defence is neither honest nor substantial.

The only other question raised by the appeal has reference to the relief granted to the Guha defendants in respect of their subsequent mortgages of 1920 and 1923 (exhibits R and T). No relief whatever was given to them in respect of their prior mortgage of 18th March, 1918 (exhibit S) and no personal decree was given to them in respect of either of the subsequent mortgages. Under Order 34, rule 4, clause 4 of the Civil Procedure Code, they were at least entitled to redeem the plaintiff or to receive their own mortgage money under exhibits R and T out of the surplus sale proceeds remaining after satisfaction of the plaintiff's mortgage. If they pay off the plaintiff they become entitled to apply for a final decree for sale in the plaintiff's stead. They have been given this relief and nothing more. The appellant claims to have a grievance that some objection to the validity of these subsequent mortgages was taken by him, but has not been tried. But their Lordships have not succeeded in ascertaining the nature of the objection which requires still to be tried. The execution of the deeds is not disputed, there is no ground for objecting to the rate of interest, the sums due upon the deeds have been enquired into and ascertained. The trial Judge rightly refused to allow the appellant to set up the interest of his father's widows and the decree will not bind them. The appellant has not shown to their Lordships any ground for dissatisfaction with the orders of the trial Judge upon his belated written statement of November, 1932—orders which have been already detailed in this judgment. On this part of the case also the appeal must fail.

Their Lordships will humbly advise His Majesty that this appeal be dismissed. The appellant will pay the costs of respondent No. 1.



In the Privy Council

HEM CHANDRA ROY CHAUDHURY

v.

SURADHANI DEBYA CHAUDHURANI
AND OTHERS

DELIVERED BY SIR GEORGE RANKIN

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