

(1999) 10 GAU CK 0010

Gauhati High Court

Case No: Second Appeal No. 126 of 1994

Jarina Khatun (Mustt)

APPELLANT

Vs

Md. Hassen Ali and
Another

RESPONDENT

Date of Decision: Oct. 4, 1999

Acts Referred:

- Contract Act, 1872 - Section 16
- Evidence Act, 1872 - Section 111, 114
- Negotiable Instruments Act, 1881 (NI) - Section 118

Citation: (2000) 1 GLT 594

Hon'ble Judges: J.N. Sharma, J

Bench: Single Bench

Advocate: D.C. Nath, for the Appellant; D.K. Bhattacharjee and B.M. Choudhury, for the Respondent

Judgement

J.N. Sarma, J.

The substantial questions of law as indicated in the memo of appeal is whether the Ext. 1 is the deed of sale and or whether it was procured fraudulently from the Defendant No. 2 by the Plaintiff. It is submitted that Defendant No. 2 is a paradanashin illiterate lady coming from the rural area and the appellate court has found as follows:

1. I am of the opinion that the Plaintiff has miserably failed to prove that the Defendant No. 2 executed the sale deed No. 1446/69 of dated 21.4.69 selling the suit land with her full knowledge and belief on the contrary I am of the view that the registered sale deed in question was procured fraudulently misleading the Defendant No. 2.

2. It was further found that the sale deed was executed on 21.4.69 the suit was filed on 21.4.90. It is further pointed out that the Plaintiff never got the possession of the suit label even after the registered sale deed dated 21.4.69. The law on this point has been settled

by a Division Bench Judgment of this Court reported in 1986 (1) GLR 147 in Mustt Jubeda Khatun v. Sulaiman Khan wherein the Division Bench has held as follows:

The well settled legal position is that the burden of proof shall always rest upon the person who seeks to sustain a transaction entered into, with a pardanashin lady to establish that the said document was executed by her after clearly understanding the nature of transaction. It should be proved that she was prepared to act both physically and mentally in execution of the said document and this burden must be discharged by evidence direct and circumstantial.

Hon"ble Lahiri C.J Acting pointed out as follows:

Rustics who are ignorant illiterate or semi-literate are more likely to be imposed upon by the exertion of undue influence over them. They have pardas illiteracy and ignorance. Indeed they may not be physical parda but surely they are mental pardas. Due to ignorance, illiteracy and simplicity they should also be treated in the same class. Do they stand on a better footing than rich pardanashin women. Until their pardas are removed and they are made equal to the rest of the people the principles which are being applied in the Court of Chancery, that is, the protection to all weak, ignorant and infirm persons should also be extended to our rural population who are weak ignorant and infirm. They are also likely to be imposed upon, influenced by the exertion of undue influence over them. Uneducated or semi-literate women are more susceptible to exertion of undue influence. Many of them have lost everything. Many more are losing everyday. In my opinion the ignorant rustics who have no knowledge about the of legal documents should have the same protection which are being afforded to rich pardanashin women. It is high time that all should do something positive and affirmative in the constituency as well. It is for consideration whether the provisions of Section 111 of the Indian Evidence Act; the positions of Section 114, illustration (c) Section 16 of the Contract Act, 1872 and Section 118 of the Negotiable Instrument Act, 1881 need be suitably amended and the principles applicable to pardanashin ladies should be expressly made applicable to the weak ignorant and infirm and to those who for any other reason are specially likely to be imposed upon by the exertion of undue influence over them.

2. That being the position of law and the finding of fact quoted above I do not find any merit in this second appeal and the same shall stand dismissed. I have heard Mr. D.C. Nath learned Advocate for the Appellant and Mr. D.K. Bhattacharjee learned Advocate for the Respondent.