

**(1890) 03 PRI CK 0005**

**Privy Council**

**Case No:** None

Asgar Ali and Others

APPELLANT

Vs

Jibun Nissa and others

RESPONDENT

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**Date of Decision:** March 14, 1890

**Citation:** (1890) 17 ILRPC 938

**Hon'ble Judges:** Macnaghten, B. Peacock, R. Couch, JJ.

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### **Judgement**

R. Couch, J.

1. The respondents in this appeal brought a suit against the appellants, in which they alleged that Delrus Banu Begum died possessed of considerable property, and that they were, according to the Shiah law, of which sect the family were members, her heirs, and as such were entitled to the estate left by her. The defence depended upon a transaction which took place on the 3rd and 4th of August 1876.

2. In order to explain that transaction it may be stated that Mahomed Mehdi, the principal party to it, was the grandson of a brother of Delrus Begum. The nature of it was that Delrus Begum, who was said to be wishing to raise money, sent for Mehdi, and on his coming an agreement was made by which he was to pay her Rs. 12,000, and to receive in return a putni of her estate, with the exception of the house in which she lived, and about 20 bighas of land. He was also to have a kobala or deed of sale of the house and premises, and the Rs. 12,000 were equally distributed between the putni and the kobala. It is apparent from the evidence that this was one transaction. The putni was executed on the 3rd of August 1876, and the kobala on the following day. The putni states that out of 268 bighas of land in holding No. 186, Delrus Begum had her dwelling-house and 20 bighas of land; and that she had issued a notification for letting out in putni the 248 bighas, and that Mehdi, having applied to take the land in putni, she granted him a putni on receipt of a bonus of Rs. 6,000 at a determined and fixed annual rental of Rs. 647-14-10 gundahs in respect of her proprietary right in the 248 bighas. It provides that out of that rental he is to pay the annual Government revenue of Rs. 347-14-10 gundahs, and to pay

to her Rs. 300 per annum as profits for her proprietary right.

3. By the kobala Delrus Begum sold to Mehdi for Rs. 6,000 her rights in about 20 bighas of land belonging to her dwelling-house, together with the pucca buildings and garden with trees, etc.

4. On the same date, the 4th of August, Mehdi executed an ijara by which he granted to Delrus Begum all his rights in the land included in the putni and kobala, at a rent of Rs. 2,647 14 annas 10 pie. This is the amount of rent Delrus Begum was to receive under the putni, with Rs. 2,000 in addition, and it provided that if Delrus Begum failed to pay the rent due on account of any instalment on the first day of the succeeding month, she should be liable to pay interest for the overdue instalment at the rate of 1 per cent, per mensem, and if she failed to pay the rents due on account of three successive instalments, her ijara rights were to cease on the first of the fourth month, and she says: "I shall not make any default in the payment of any instalment; and if any land be taken by Government, I will not get the compensation there of--that is, any portion of the value of it."

5. There were two questions raised by the defence--first as to the putni, and next as to the kobala. The case has been before five Judges of the High Court, and the Judge of the 24-Pergunnahs, and all those Judges came to the conclusion, with regard to the kobala, that it was not intended to be a real transaction. It has not been contested by Mr. Doyne, who has argued the case with great care and ability, and has called their Lordships' attention to every portion of the evidence which might assist the case of his clients, that this is a true finding.

6. That is very important with reference to the putni, because it was evidently one transaction, and it would be very difficult, if not impossible, to come to the conclusion that if that part of the transaction was altogether an unreal one, and that it was never intended that it should operate as a sale, the other part, that is the putni, was intended to be a real transaction. The consideration is said to have been Rs. 12,000; but it is obvious that at least Rs. 6,000 were never paid, and, were not intended to be paid, or to have any effect as purchasing the property. With regard to the putni, the case was presented in the High Court as being a case of a fraud practised upon Delrus Begum; and it seems to have been treated in that way by some of the learned Judges. Their Lordships see no ground for thinking that any fraud was practised upon the lady. The defect in the transaction is that the intention on her part was not that which is apparent on the face of the deeds--in fact, that the deeds do not represent really what was intended. The evidence has been very fully examined, and it is not necessary to say more than that their Lordships, after the full argument which has been addressed to them on behalf of the appellants, have come to the conclusion that, as regards the result of the case, they agree in the judgment which has been given by the learned Judges of the High Court on the appeal from the two Judges who differed in opinion. They agree in that result for the reasons which were given by Mr. Justice Wilson towards the conclusion of his

judgment, namely, that the deeds were not intended to operate according to their tenor.

7. Their Lordships will therefore humbly advise Her Majesty to affirm the decree of the High Court of the 16th August 1886, and to dismiss the appeal; and the appellants will pay the costs of it.