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**(1910) 04 CAL CK 0035**

**Calcutta High Court**

**Case No:** None

Felaram Roy and Others

APPELLANT

Vs

Bagalanand Banerjee

RESPONDENT

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**Date of Decision:** April 5, 1910

**Citation:** 6 Ind. Cas. 207

**Hon'ble Judges:** Sharf-ud-din, J; Brett, J

**Bench:** Division Bench

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### **Judgement**

1. The present appeal arises out of a suit brought by the reversioner to set aside a permanent lease bearing date the 7th Chaitra 1294, executed in favour of the defendants by one Sudha Mukhi Debi, widow of one Hangeswar Roy. It appears that Sadha Mukhi Debi gave the defendants a permanent lease of a tank taking from them a selami of Rs. 125 and reserving an annual rent of eight annas only. On behalf of the plaintiff It is contended that the widow-has no right to execute such a lease and that, even if the debt for the payment of which the lease was given was a debt due from her husband, she could have raised the money out of the property by some other means.

2. The Court of first instance was of opinion that the lease was brought about by fraud and that, on that account, it should be set aside. That Court accordingly decreed the plaintiffs suit with costs.

3. On appeal, the lower appellate Court has reversed the finding of the Court of first instance as regards fraud and has held, as a fact, that the lease was a bona fide transaction. With that finding, this Court on second appeal is unable to interfere. The lower appellate Court then takes into consideration the question whether there was any legal necessity for the lease and. comes to the finding that, as the money was raised fop payment of the debt due from the husband of the widow, there was sufficient legal necessity to justify the widow in executing the lease. The District Judge, however, found that the debt to pay off which the lease was given, amounted to Rs. 100 only and, as the selami taken for the lease was Rs. 125, he was of opinion

that there was not sufficient legal necessity for taking this further sum of Rs. 25, and that, therefore, this case was a proper one for the application of the method adopted and approved by their Lordships of the Privy Council in the case of the Deputy Commissioner of Kheri v. Khanjari Singh 11 C.W.N. 474 : 29 A. 331 : 5 C.L.J. 344 : 4 A.L.J. 232 : 2 M.L.T. 145 : 17 M.L.J. 233 : 9 Bom. L.R. 591 : 10 O.C. 117 (P.C.). He accordingly passed a decree declaring the plaintiff to be entitled to recover possession of the property provided that he paid within three months from the date of the judgment to the contesting defendants such portions of the decretal amount under judgment Exhibit M as their shares in the lease entitled them to.

4. The defendants have appealed and, after hearing the learned pleaders on both sides, we think that the appeal should be decreed. We are of opinion that this is not a case to which the decision of their Lordships of the Privy Council referred to above can have any application. In that case, the property was sold in order to discharge a debt of over Rs. 7,000, due from the husband of the widow and also for a fresh loan of over Rs. 7,000 for the benefit of the widow. "On a suit by the reversioner, their Lordships, held that the sale could not be maintained but that, as the sum of over Rs. 7,000, had been taken for the discharge of a legal debt due from the estate of the husband, the vendees would be entitled to recover that sum from the estate. The present case is different. It has been held by this Court in the cases of Lala Chatra Narayan v. Uba Kunwari 1 B.L.R. 201 and Sugeeram Begum v. Juddoobuns Suhaye 9 W.R. 284, that a sale, such as the present, cannot be set aside upon payment of the amount which it was necessary for the widow to raise to pay off a legal debt, simply because the property sold was net sold for a sum which exactly covered that debt. It would manifestly be impossible and possibly prejudicial to the interest of the estate, if the widow were to be held to be bound in every instance to sell property for payment of a debt due from her husband for exactly the sum due to the creditor. And we are of opinion that their Lordships of the Privy Council did not intend to lay down any such rule. We accordingly decree the appeal, set aside the judgments and decrees of both the lower Courts and direct that the plaintiff's suit be dismissed. The appellants are entitled to their costs in all the Courts.