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**85 Ind. Cas. 221**

**Calcutta High Court**

**Case No:** None

Ramani Kanta Ray

APPELLANT

Vs

Bhimnandan Singh and  
Others

RESPONDENT

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**Date of Decision:** Feb. 2, 1923

**Acts Referred:**

- Evidence Act, 1872 - Section 90

**Citation:** 85 Ind. Cas. 221

**Hon'ble Judges:** Walmsley, J; B.B. Ghose, J

**Bench:** Division Bench

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### **Judgement**

B.B. Ghose, J.

These appeals arise out of three suits for rent. The claim is based upon three kabuliyats alleged to have been executed by two ladies, Sheo Kumari and Kulamanti. The defendants are in possession of the properties included in the kabuliyats claiming to have interest as the reversionary heirs of the last male owner. The question only relates to the rate of interest stipulated in those kabuliyats which is six pies per rupee, per month. The defendants' plea is that as the lauds have come to their hands as the reversionary heirs of the last male owner, they are not bound by the stipulation contained in the kabuliyats as regards the payment of interest and that the ladies did not, as a matter of fact, execute these documents. The documents purport to be more than thirty years old and on the face of them, they are executed or rather signed as "Sheo Kumari and Kulamanti-ba-kalam--Sadanand am-mukhtar.", The Court of first instance presumed that the documents had been executed by these two ladies u/s 90 of the Evidence Act and gave a decree to the plaintiff according to the rate of interest claimed. On appeal the learned Subordinate Judge held that, though there was a presumption that the documents had been executed by Sadanand, no presumption could be raised that Sadanand had authority to execute those documents on behalf of the ladies. Upon that finding, the learned Subordinate Judge held that those documents had not been proved to have been

executed by the ladies and that consequently, under no circumstance, could it be held that the defendants were bound by the stipulations contained in them as regards the payment of interest. It is not necessary to refer to the other two points dealt with by the Subordinate Judge, if this finding with regard to the question of the execution of the documents is accepted to be correct.

2. It is contended on behalf of the plaintiff, who is the appellee before us, that the effect of the signature by the am-mukhtar is that the documents purport to have been executed by the ladies, and if that is so, the presumption u/s 90 of the Evidence Act arises and it should be held that the ladies were the executants of the documents. It seems to me that the documents were really executed by Sadanand as the am-mukhtar of the ladies and the presumption raised by Section 90 of the Evidence Act is that the documents were executed by Sadanand as am-mukhtar, and it must be proved that this am-mukhtar had authority to execute the documents on behalf of the ladies. The presumption raised seems to be equivalent to this, as if Sadanand had come to Court and simply said: "I signed the documents (ba-kalam) for the ladies," and nothing more. In such a case, on that evidence, the plaintiff certainly could not have asked the Court to infer, without further proof, that the documents were executed by the ladies. The presumption u/s 90 of the Evidence Act, in my opinion, only exonerates the plaintiff from calling Sadanand for the purpose of proving that he signed the documents for the ladies. He must prove that Sadanand had authority from the ladies to sign their names. The ground, therefore, urged on this head fails. It is not necessary as I have already stated, to notice the other grounds urged as regards the liability of the defendants to pay interest according to the terms in the kabuliyats as this first ground fails.

3. Another ground urged is that, instead of allowing interest at the rate of 12½ per cent, per annum, the Court should have allowed damages at the rate of 25 per cent. So far as I can see the difference, if any, would be a very small amount, the rent claimed being for four years. In any case, there is no good ground why the decrees of the Subordinate Judge allowing interest at the rate of 12½ per cent, should not stand.

4. The appeals, therefore, fail and must be dismissed with costs.

Walmsley, J.

5. I agree.